

(22,377)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 161.

THE DETROIT UNITED RAILWAY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

INDEX.

	Original.	Print
Petition for writ of certiorari.....	1	1
Ordinance approved February 4, 1893.....	2	2
Complaint in recorder's court.....	4	3
Writ of certiorari allowed.....	5	3
Return to writ of certiorari.....	5	4
Bill of exceptions from recorder's court.....	5	4
Act of October 24, 1907.....	6	4
Testimony of James Dowd.....	6	4
Henry Bullen ..	7	5
Offers by defendant.....	9	6
Testimony of Strathearn Hendrie.....	12	8
Defendant's requests.....	15	9
Recorder's certificate.....	17	10
Exhibit A—Ordinance of April 7, 1891.....	17	11
B—Consent and acceptance of March 13, 1891	20	13
C—Consent and acceptance of March 13, 1891	23	14
D—Ordinance of May 3, 1905.....	23	15

	Original.	Print
Exhibit F—Deed, Jefferson Ave. Ry. Co. to Detroit Suburban Ry. Co., November 1, 1892.....	28	17
Gi—Deed, George Hendrie <i>et al.</i> to Jefferson Ave. Ry. Co., June 8, 1891.....	30	19
H—Deed, George Hendrie <i>et al.</i> to Detroit Suburban Ry. Co., November 1, 1892.....	32	20
I—Deed, Detroit Suburban Ry. Co. to Detroit United Railway, December 31, 1900.....	34	21
J—Ordinance of November 24, 1862.....	38	23
K—Section 5 of ordinance of November 14, 1879..	51	31
L—Section 1, &c., of ordinance of January 3, 1889..	51	31
M—Ordinance of February 4, 1893.....	54	33
N—Deed, Detroit City Ry. to Detroit Street Ry. Co., December 1, 1890.....	55	34
O—Deed, Detroit Street Ry. Co. to Detroit Citizens' Street Ry. Co., September 16, 1891..	57	35
P—Deed, Detroit Citizens' Street Ry. Co. to Detroit United Ry., December 31, 1900.....	59	36
Q—Articles of incorporation of Detroit United Railway.....	62	38
Argument and submission.....	67	41
Order filing opinion.....	68	41
Opinion by Montgomery, C. J.	69	42
Order staying entry of judgment.....	73	44
Order submitting motion for rehearing.....	74	44
Order for rehearing before a full bench.....	75	45
Argument and submission on rehearing.....	76	45
Opinion by Stone, J.....	77	46
Judgment.....	80	47
Petition for writ of error.....	81	48
Writ of error.....	85	51
Citation and service.....	87	52
Bond on writ of error.....	88	52
Assignment of errors.....	89	54
Clerk's certificate.....	92	56
Stipulation for addition of blue print to record.....	93	57
Blue print.....	94	57

1 THE DETROIT UNITED RAILWAY, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

Petition for Writ of Certiorari.

To the Supreme Court:

The petition of the Detroit United Railway shows unto the Court that it is a corporation existing under the laws of this State; that a complaint was filed December 1, 1907, against your petitioner in the Recorder's Court of the City of Detroit, a copy of which is hereto annexed, for refusing to sell tickets good for transportation on its cars at the rate of eight tickets for twenty-five cents, in the portion of the City of Detroit which was formerly part of the Village of Fairview and annexed at the last session of the Legislature to the City of Detroit, which alleged offense was in violation of a city ordinance, a copy of which is annexed. That your petitioner appeared by counsel and pleaded not guilty to said complaint and afterwards the matter of said complaint was brought on for trial before the Honorable James Phelan, Recorder, without a jury. Testimony was taken on said trial and your petitioner requested the court to make certain findings; which said testimony and the proceedings on said trial and your petitioner's said requests are embodied in a bill of exceptions, a copy of which is hereto annexed. That on the 20th day of January, 1908, said Recorder's Court found your petitioner guilty as charged in said complaint and on the 27th day of January, 1908, imposed a fine of one hundred dollars and costs on your petitioner.

Your petitioner is advised by counsel and believes and avers that there was error in said proceedings in this that said Recorder refused to find as requested in said several requests, and found your petitioner guilty as charged in said complaint, and caused a judgment to be entered in the matter of said complaint adjudging your petitioner guilty as aforesaid and imposing a fine upon your petitioner for the sum of one hundred dollars and costs, which

2 finding and judgment are against the just rights of your petitioner and your petitioner prays that a writ of certiorari do issue out of this court directed to said Recorder's Court directing it to transmit to the court the record and proceedings in the said cause in the matter of said complaint and that the same being duly considered may be set aside, quashed and altogether vacated.

DETROIT UNITED RAILWAY,
By JOHN J. SPEED, *Its Attorney.*

STATE OF MICHIGAN,
County of Wayne, ss:

John J. Speed, being duly sworn, says he is the attorney of the above named petitioner; that he has read the foregoing petition and knows the contents thereof; that deponent knows the facts relating

to the matters set forth in said petition and that as so set forth the said petition is true.

JOHN J. SPEED.

Subscribed and sworn to before me this 29th day of January, A. D. 1908.

B. D. PRETZER,
Notary Public, Wayne County, Mich.

My commission expires July 8, 1909.

Ordinance.

Approved February 4, 1893.

Whereas, Section 6 of an ordinance approved January 3, 1889, being part of Chapter 109 of the Revised Ordinances of the City of Detroit, for the year 1890, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary in relation to the Detroit City Railway, its successors and
3 assigns, is reserved to the Common Council of the City of Detroit, and,

Whereas, Paragraph D of Section IV of said ordinance approved January 3rd, 1889, with reference to said railway being part of chapter 109 of the Revised Ordinances of the City of Detroit for the year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight (8) tickets for twenty-five cents, to be good for transportation between certain hours of each day;

It is hereby ordained by the People of the City of Detroit:

SECTION 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns to furnish and provide the conductors of each and every car operated by the said company within the limits of the City of Detroit with tickets to be good for transportation between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m., each ticket to be good for transportation as provided for in said ordinance. (As amended February 26th, 1895.)

SECTION 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductors or other duly authorized agents, to any person or persons applying therefor upon each and every car operated by said company within the limits of the City of Detroit, tickets, to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m. at the rate of eight tickets for twenty-five cents, each ticket to be good for one fare. (As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Detroit City Railway, its successors and assigns, shall neglect to
4 provide tickets and refuse to sell to persons applying therefor as herein provided, the said company may be complained of, as for a distinct offense and punished as hereinafter provided.

SECTION 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine when so imposed may be recovered from the person or corporation so convicted in an action at law in the proper court.

Complaint.

In the Recorder's Court.

STATE OF MICHIGAN,
Wayne County, City of Detroit, ss:

John L. Shepard, being first duly sworn, makes complaint and says, that at the City of Detroit, aforesaid, on the 7th day of November, A. D. one thousand nine hundred and seven, within the corporate lines of said City, to-wit, on Jefferson avenue, one Detroit United Railway, a corporation organized and doing business under the laws of the State of Michigan, did then and there unlawfully and wilfully fail and neglect by Conductor No. 31, its duly authorized agent in charge of car No. 1163 to sell tickets at the rate of eight (8) tickets for twenty-five cents, each ticket to be good for transportation within the city limits between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m., to the evil example of all others in the like case offending and contrary to the ordinances of said city in such case made and provided, Section two, of an ordinance providing for the sale of tickets on cars, Chapter —, page 312, of the Compiled Ordinances of the City of Detroit, for the year 1904.

JOHN L. SHEPARD.

Sworn and subscribed to before me this 10th day of December, A. D. 1907.

Filed Dec. 10, 1907.

JOHN R. BARLOW,
Deputy Clerk of Recorder's Court.

Dec. 16, 1907, defendant appeared by counsel and pleaded not guilty to the foregoing complaint.

February 20, 1908, cause tried and defendant found guilty by the Court.

February 27, 1908, judgment entered finding the defendant one hundred dollars and five dollars costs.

5 February 15th, 1908, Writ of Certiorari was duly allowed by Hon. Claudius B. Grant, Chief Justice of the Supreme Court.

February 21st, 1908, return to Writ received and filed in the Supreme Court.

Return to Writ of Certiorari.

Bill of Exceptions.

Recorder's Court for the City of Detroit.

No. 68459.

THE PEOPLE OF THE STATE OF MICHIGAN
vs.
DETROIT UNITED RAILWAY.

This cause coming on for trial, the complaint having been read and the defendant having pleaded not guilty thereto, before the Honorable James Phelan, Recorder, without a jury, the following proceedings took place:

Mr. WEADOCK: This is a complaint under the ordinance regulating the sale of tickets on street cars, and the offense occurred in the new territory recently annexed to the City of Detroit, under the act of the Legislature, and approved October 24th, 1907. Section 1 of the act describing the territory reads as follows:

"On and after the first day of — A. D. 1907, all that territory situated in the Village of Fairview, in the Township of Grosse Pointe, in the County of Wayne, lying and being west of the line two hundred feet east of Alter road in said Village of Fairview and extending from the northerly limits of said Village to Lake St. Clair shall by virtue of this act be annexed to and form a part of said City of Detroit."

Section 9 of the same act reads: "All of the provisions of an Act entitled 'An Act to provide a charter for the City of Detroit and to repeal all acts and parts of acts in conflict therewith, approved June 7, 1883, as amended and all the statutes, laws, and ordinances applicable to said City of Detroit, shall apply to and be operative in the territory so annexed to said city, except as in this act otherwise provided. All acts and parts of acts in conflict therewith are hereby repealed. This act is ordered to take immediate effect."

JAMES DOWD, a witness on behalf of the People, testified as follows:

John Shepard and I boarded the defendant's Grosse Pointe car No. 1163 on the 6th of November, 1907, at the corner of Townsend and Jefferson avenue, within the city limits, said car being in charge of Conductor No. 31 and was bound east; that while riding eastward in front of the race track and being in the territory which formed a part of the Village of Fairview and was recently annexed to the City of Detroit, and east of the St. Jean Road, and west of the Alter Road, so-called, I purchased from the conductor for twenty-five cents, Workingman's Tickets, so-called, and which were sold by the company on its cars within the City Limits at the rate of eight tickets for twenty-five cents and good

during certain hours. I offered him in payment of the fares of Shepard and myself at 5:20 o'clock p. m. two of said tickets, which were refused by said conductor and we then paid five cents cash fares for the balance of the ride.

The testimony for the People being closed, the following testimony was given in behalf of defendant:

HENRY BULLEN testified as follows:

I am general superintendent of the Detroit United Railway. I know the line of railway through what was formerly the Village of Fairview, running up to Grosse Pointe and further on, forming what is known as the Jefferson avenue line and the continuation of the present Jefferson avenue line. It was all rebuilt last summer and the summer before in Fairview and east of Fairview. Before the rebuilding, it was on the side of the road. Partially one track on one side of the road and the other track on the other side of the road, and then there was a double track both on one side for the rest of the way. In Fairview as far as the Rush House there was one track on each side and from the Rush House east the other side of Fox Creek, I believe they were both on one side. At the time of the reconstruction it was taken from the side of the road and placed in the center of the highway and the street was paved, paved between the tracks from the old city limits to Hilger avenue and beyond that it is macadamized. The remainder of the street was paved by the Village at the same time. The Village of 8 Fairview was in the Township of Grosse Pointe.

The Detroit United Railway operated the road running from the city up to Grosse Pointe since its organization five or six years ago.

Cross-examination.

The cars that go east on Jefferson avenue—some go as far as St. Jean car house. There is a Grosse Pointe line that goes farther, of Jefferson avenue cars that go to the Country Club. The cars that travel in a westerly direction on Jefferson avenue start from St. Jean car house on the St. Jean road, excepting the cars that go east to Grosse Pointe and then return going west. The cars bound westerly go out the Grand River road alternating to the Boulevard or to Myrtle street. They all pass through Jefferson avenue, turn north on Griswold street and continue from Griswold on to Grand River, alternating, one going out on Grand River (it runs to the westerly city limits) and the other going out on Myrtle street. There is a Shore Line car which comes in from Mt. Clemens and goes around the City Hall and up Jefferson avenue. The car that runs out Grand River goes to the westerly city limits and the Myrtle street cars to the corner of 26th and Myrtle streets.

In the winter time, east of St. Jean road, it's a thirty minute line and in the summer it varies from fifteen to thirty minutes, and on Saturday afternoons and Sundays it runs from six to fifteen minutes. When we run a six-minute line the parties living east of the St. Jean Road have a six-minute service right through to

Grand River avenue and a thirty-minute schedule means that they have a thirty-minute service into the city and through Grand River avenue.

Workingmen's tickets have been sold since May 6th in the territory annexed, as soon as they could be gotten from the printers. They have printed on them, "Not good for fare on Jefferson avenue east of St. Jean Road."

9 Before the 6th of May the ordinary workingmen's tickets did not have that language on them. This is not printed on the ordinary workingmen's tickets. The kind we wanted to sell out there were not in stock.

Defendant's counsel then gave in evidence the following:

1. A certified copy of a grant made by the Township of Grosse Pointe to George Hendrie, William B. Moran, George S. Davis, John O. Donnelly, Strathearn Hendrie and Cameron Currie and their associates and assigns for the purpose of constructing a railway through Jefferson avenue from the easterly limits of the City of Detroit to a point in the Township of Grosse Pointe on the shore of Lake St. Clair where the same intersects the line between the counties of Wayne and Macomb, which grant was made April 17th, 1891; a copy of which is hereto annexed and marked Exhibit A.

2. A certified copy of a grant from the Village of Grosse Pointe to George Hendrie, et al., for the construction and operation of a railway on Jefferson avenue through the Village of Grosse Pointe, the line to be completed from the city of Detroit to the Club House, so-called, by July 1, 1891, said certified copy being dated March 13th, 1891, a copy of which is hereto annexed and marked Exhibit B.

3. An acceptance of the last above mentioned grant by George Hendrie and others, grantees, dated March 13th, 1891, copy of which is hereto annexed and marked Exhibit C.

4. Certified copy of an ordinance by the Village of Fairview, passed May 3, 1905, granting consent to the Detroit United Railway for the construction of a double track on Jefferson avenue from the westerly to the easterly limits of said Village. A copy of which is hereto annexed and marked Exhibit D.

10 5. A certified copy of the acceptance of said last mentioned grant by the Detroit United Railway, dated May 17th, 1905. Copy of which is hereto annexed and marked Exhibit E.

6. A conveyance dated November 1st, 1892, by the Jefferson Avenue Railway Company to the Detroit Suburban Railway Company of certain rights, privileges and franchises which were granted by the Village of Grosse Pointe, March 13th, 1891, to George Hendrie and others, for the construction of a railway upon Jefferson avenue and a like grant made by the Township Board of Grosse Pointe, April 8th, 1891; also a grant made by the Township Board of the Township of Hamtramck, April 14th, 1891, for the construction of a railway by said last named parties on Jefferson avenue in said township; which said concessions were made by said George Hendrie and others transferred to said first party June 8th, 1891. A certified copy of which is hereto annexed and marked Exhibit F.

7. A conveyance dated June 5th, 1891, by George Hendrie and others to the Jefferson Avenue Railway Company of the rights, privileges and franchises granted by the Village of Grosse Pointe and Townships of Grosse Pointe and Hamtramck, mentioned in the exhibits above mentioned. A copy of which is hereto annexed and marked Exhibit G.

8. An assignment dated November 1st, 1892, from George Hendrie, et al., to the Detroit Suburban Railway Company of the franchises granted by the Village of Grosse Pointe and the Townships of Grosse Pointe and Hamtramck, mentioned in the exhibits above mentioned. A copy of which is hereto annexed and marked Exhibit H.

9. A conveyance dated December 31st, 1900, from the Detroit Suburban Railway Company to the Detroit United Railway
11 of the lines of street railway of the parties of the first part, and all rights, privileges and franchises possessed and enjoyed by the party of the first part in the Townships of Springwells, Greenfield and Hamtramck, in the Villages of Grosse Pointe, Highland Park and Springwells, and in the City of Detroit, and all franchises and grants made by the City of Detroit and said townships and villages. A copy of which is hereto annexed and marked Exhibit I.

10. An ordinance dated November 24th, 1862, made by the Common Council of the City of Detroit, granting certain franchises to Cornelius S. Bushnell et al. A copy of which is hereto annexed, marked Exhibit J.

11. Section 5 of an ordinance passed by the Common Council of the City of Detroit and approved December 14th, 1879, extending the franchise contained in the ordinance last above mentioned for thirty years from date. A copy of which is hereto annexed, and marked Exhibit K.

12. Section one and Paragraph "D" of an ordinance of the Common Council of the City of Detroit, approved January 3rd, 1889, granting certain franchises to the Detroit City Railway. A copy of which is hereto annexed, marked Exhibit L.

13. An ordinance of the Common Council of the City of Detroit, approved February 4th, 1893, and amended February 26th, 1895, providing for the sale of certain tickets on cars. A copy of which is hereto annexed, marked Exhibit M.

14. A conveyance dated December 1st, 1890, from the Detroit City Railway to the Detroit Street Railway Company, of its rights, franchises tracks and other property. A copy of which is hereto annexed, marked Exhibit N.

15. A conveyance dated September 16th, 1891, from the
12 Detroit Street Railway Company to the Detroit Citizens' Street Railway Company, of its franchises, tracks and other property. A copy of which is hereto annexed, marked Exhibit O.

16. A conveyance from the Detroit Citizens' Railway Company to the Detroit United Railway of all its franchises, railway tracks and property. A copy of which is hereto annexed, marked Exhibit P.

17. Articles of incorporation of the Detroit United Railway. A copy of which is hereto annexed, marked Exhibit Q.

STRATHEARN HENDRIE, a witness on behalf of the defendant testified:

I am the Strathearn Hendrie named in the franchises granted by the Township of Grosse Pointe and Village of Grosse Pointe for a railway on Jefferson avenue in the township and village. I was also an officer and member of the Board of Directors for the Jefferson Avenue Railway, the Detroit City Railway, and the Detroit Suburban Railway, and am familiar with the construction of the railways known as the Detroit City Railway and the railway going through the Townships of Hamtramck and Grosse Pointe. The Detroit City Railway first constructed its road in the City of Detroit as far as what is known as Mt. Elliott avenue. It afterwards extended its road to a point about two hundred feet east of Baldwin avenue, when the part of the city between Mt. Elliott avenue and Baldwin avenue was annexed to the city. But it never extended its route easterly through Hamtramck and Grosse Pointe of a point two hundred feet east of Baldwin avenue. The railway east of that point was constructed by the Jefferson Avenue Railway in Grosse Pointe, and

13 which took over some franchises which had been granted by the Township of Hamtramck to George Hendrie and others.

The Hamtramck Street Railway Company operated on Jefferson avenue from Mt. Elliott to Baldwin, or the neighborhood of Baldwin. I think the property of the Hamtramck Railway was given to the old Detroit City Railway, and the Detroit City Railway took over and occupied the territory occupied by this road under the ordinance of 1889, but how they disposed of the old original company I do not know.

The Jefferson Avenue Railway conveyed its road and franchises to the Suburban Railway Company, which company, I think, possibly organized in our office and turned over to the Detroit Street Railway; it was an adjunct of the Detroit Citizens' Street Railway in 1892, and I understand the Detroit Suburban Railway Company conveyed its rights and property to the Detroit United Railway. The Detroit City Railway never had any interest in the Jefferson Avenue Railway or its franchises. That company, the Detroit City Railway, was incorporated in May, 1863, and it ceased to be a corporation in May, 1893. It conveyed its railway and all its rights in the City of Detroit to the Detroit Street Railway Company in 1890, and after that conveyance the Detroit City Railway ceased to do any business. The Detroit Street Railway was a reincorporation, composed of the same stockholders as the Detroit City Railway and incorporated under the Street Railway Act. So far as I know, the Citizens' Company was actually in possession and actually operating the old Detroit City Railway when this street railway ticket ordinance was passed in 1893. The old personnel, the old stockholders and Board of Directors, went out with the Detroit City Railway. The Detroit

14 Street Railway Company conveyed all its property to the Detroit Citizens' Street Railway Company in 1891, and I am informed the Detroit Citizens' Street Railway Company made a conveyance of this property to the Detroit United Railway.

The Hamtramck Street Railway Company was granted the franchise by the Township of Hamtramck in August 1873 to run cars on Jefferson avenue from Mt. Elliott avenue to McClellan avenue, and on November 1, 1881, this franchise on Jefferson avenue was confirmed by the Supervisor and Commissioner of Highways in a resolution which recited the purchase of the road by the Detroit City Railway. The original incorporators of the Detroit City Railway were:

Homer Randall, of New York, N. Y.
James J. Belden, of Syracuse, N. Y.
Horace Hiscock, of Syracuse, N. Y.
Frank Hiscock, of Syracuse, N. Y.
Thomas P. Davis, of Syracuse, N. Y.
Austin Myers, of Syracuse, N. Y.
Eben N. Wilcox, of Syracuse, N. Y.

who subsequently transferred their stock in the Detroit City Railway to George Hendrie, William Hendrie, James McMillan, Hugh McMillan, William K. Muir, Sidney D. Miller, and others.

The original incorporators of the Suburban Railway were:

George H. Russell, Detroit, Mich.
Martin S. Smith, Detroit, Mich.
Wm. C. Colburn, Detroit, Mich.
Henry B. Ledyard, Detroit, Mich.
Wm. C. McMillan, Detroit, Mich.
Dexter M. Ferry, Detroit, Mich.

The original incorporators of the Detroit Citizens' Street Railway were:

Thos. M. Waller, New London, Conn.
15 Mills W. Brase, Buffalo, N. Y.
Wm. D. Cook, New York City.
Dwight Townsend, New York City.
Willard B. Ferguson, Newburyport, Mass.
Hoyt Post, Detroit, Mich.
John B. Mulliken, Detroit, Mich.

The foregoing is all the testimony that was given on the trial of said cause.

Thereupon the following requests were made by the defendant:

1. The defendant requests the Court to find the defendant not guilty and to enter judgment thereon in favor of the defendant for the reason that the defendant is not required to sell so-called workmen's tickets at the place where the witness for the people testified he offered to purchase the same.

2. It appearing that the alleged refusal to sell tickets occurred on the railway running through the territory which was within the limits of the Village of Fairview and recently annexed to the City of Detroit, and it appearing that a grant or franchise for said railway was made to the defendant by said village, and in said grant the rate of fare was fixed at five cents, and there was no stipulation under which it was agreed that said tickets should be sold or accepted at the rate of eight for twenty-five cents, the defendant requests the Court

to find that said grant is a binding contract fixing said rate of fare, and its obligations cannot be impaired by the Act of the Legislature or Ordinance of the City of Detroit.

3. That so far as the act annexing the territory embraced within the limits of the Village of Fairview (or part thereof) purports to make operative any ordinance of the City of Detroit requiring the defendant to sell or accept the so-called workingmen's tickets
16 on the cars of defendant within the territory so annexed, said act impairs the obligation of the contract embodied in the said grant by the Village of Fairview to this defendant and its acceptance by this defendant in violation of Section 10 of Article 1 of the Constitution of the United States, and Section 43 of Article 4 of the Constitution of this State, and deprives the defendant of its property without due process of law, in violation of the fourteenth amendment of the Constitution of the United States.

4. That the act annexing the territory within the Village of Fairview to the city should be so construed as not to impair the obligation of the contract in relation to the rate of fare between the Village of Fairview and the defendant.

The defendant herein claims the benefit of the provisions of Article 1, Section 10, of the Constitution of the United States, and Section 43 of Article 4 of the Constitution of this State in respect to said contract.

5. It appearing that the grants for the construction and operation of the railway which ran through the late Village of Fairview in which territory the alleged refusal to sell tickets occurred were made by the Township of Grosse Pointe and by the Village of Fairview to parties other than the Detroit City Railway, and said Detroit City Railway neither constructed nor operated said railway, this defendant requests the Court to find that it is neither a successor nor assignee of said City Railway with respect to the railway on which said refusal occurred, and this defendant cannot be charged or held guilty as a successor or assignee of said Detroit City Railway under the ordinance in this case.

6. It appearing that the Detroit City Railway neither owned nor operated the railway on which the refusal to sell tickets occurred, nor had any franchise or grant from township or village authorities therefor, this defendant requests the Court to find that it is neither a successor nor assignee of said Detroit City Railway with respect to
said railway.

17 These requests were all that were made by either party for finding by the Court.

To the refusal of the Court to find as requested the defendant excepted.

Inasmuch as the foregoing does not appear of record, I have hereunto subscribed this bill of exceptions this 20th day of September, 1907.

JAMES PHELAN, *Recorder.*

EXHIBIT "A."

1. Whereas, George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Stratheran Hendrie and Cameron Currie and their associates and assigns are about to organize a railway company for the purpose of constructing or purchasing a railway in, along and through Jefferson avenue from the easterly limits of the City of Detroit to a point in the Township of Grosse Pointe on the shore of Lake St. Clair through the township of Hamtramck and Grosse Pointe and the Village of Grosse Pointe; therefore it is agreed by the township board of Grosse Pointe, and the highway commissioner of said township assenting to the ratifying the same, that consent, permission and authority is hereby given to the said George

18 Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie, Cameron Currie, and their associates and assigns, to lay, construct, maintain and operate a single or double track railway, with suitable switches, turnouts and turntables, in, along and through the said street or highway known as the Jefferson avenue or Lake Shore road, through the Township of Hamtramck to a point on said Jefferson avenue or Lake Shore road where the same intersects and crosses the line between the counties of Wayne and Macomb, and the same to keep, maintain and use.

2. The track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles and carriages along said highway, and shall be laid along one side of said highway in so far as the same is feasible.

Provided, however, that on that portion of said avenue easterly of Fox bridge, so called, to the Village of Grosse Pointe, said track shall be built on the southerly side thereof, unless said grantees, their associates and assigns shall purchase from the property owners the right to build on the northerly side.

And the said grantees, their associates or assigns, shall construct and have the said railway in operation within two years from the date hereof.

3. The said grantees and their assigns shall maintain proper and safe crossings at all crossroads and streets, and at the main or principal entrance to all farms along its line.

4. The said grantees, their associates and assigns, organized into a railway company under the laws of this State, shall be entitled to charge not more than five cents for the carriage of any single passenger for one continuous trip over that portion of the railway

19 within said township easterly of the Village of Grosse Pointe and a like amount for any passenger for one continuous trip over any portion of said railway westerly of said village in said township, and provided that for extra or special cars or trains over and above the number hereinafter fixed for each day, and for extra cars or trains not on the time card on Sunday the said railway company may charge special rates, or the full rate of fare fixed by law, and shall carry single passengers from any point westerly of

Grosse Pointe Village to any point on Jefferson avenue, in the City of Detroit, for a single fare of ten cents; and from any point on said Jefferson avenue, in said city, to any point on said line westerly of the Village of Grosse Pointe for a single fare of ten cents, on the trains called for by the following section:

5. When the said grantees, their associates or assigns, shall have completed a railway to the easterly limits of the City of Detroit, their cars shall be run each way to and from the said city limits at least four times each day excepting Sunday, and the said grantees shall have the said railway completed on that portion of the road between Detroit and the Village of Grosse Pointe, on or before the first day of July, 1891, unless prevented by legal proceedings. Provided, however, that nothing herein contained shall be construed as limiting the right of the said grantees, their associates and assigns, and the railway company, when incorporated, to run and operate said railway on Sunday, or to prohibit them from so doing.

6. If said grantees, their associates or assigns shall desire to build, maintain and operate said line of railway, or any part thereof, on a private way obtained by them, lying substantially parallel to said Jefferson avenue or Lake Shore road, on either side thereof, the same shall be considered as a compliance with the terms and requirements of this contract or consent.

7. The written consent of the said grantees to this contract and consent shall be filed with the township clerk within ten days from this date.

DAVID TROMBLEY,
Supervisor;
STEPHEN YOUNG,
Justice;
ROBERT TROMBLEY,
Justice;
GEORGE H. KELLEY,
Clerk;
WILLIAM G. DIEGEL,
Highway Commissioner,
Township Board.

STATE OF MICHIGAN,
Township of Grosse Pointe, ss:

I, Emorie A. Boone, township clerk of the Township of Grosse Pointe, in said State, do hereby certify that the foregoing and annexed paper is a true copy of an ordinance adopted by the Township Board at a session held on the 7th day of April, 1891, as appears from the Journal of said board remaining in the office of the township clerk of Grosse Pointe aforesaid; that I have compared the same with the original in my office, and the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof I have set my hand and seal this 20th day of May, A. D. 1905.

EMORIE A. BOONE, *Clerk.*

EXHIBIT "B."

1. Whereas, George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie and Cameron Currie, and their associates and assigns, are about to organize a railway company for the purpose of constructing or purchasing a railway in, along, and through Jefferson avenue from the easterly limits of the City of Detroit, to a point in the Township of Grosse Pointe, on the shore of Lake St. Clair, through the Townships of Hamtramck, Grosse Pointe, and the Village of Grosse Pointe.

Therefore it is agreed by the president and trustees comprising the Village Board of the Village of Grosse Pointe, that consent, permission and authority is hereby given to the said George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie and Cameron Currie, and their associates and assigns, to lay, construct, maintain and operate a single or double track railway, with suitable switches, turnouts and turntables, in, along and through the said street or highway known as the Jefferson avenue or Lake Shore road, through the Village of Grosse Pointe, from the westerly line of the village to the easterly village limits; also northerly on the Fischer road, so called, and easterly on a private way to be acquired by said grantees or their assigns, substantially parallel to Jefferson avenue or River road, to the easterly limits of the village, and the same to keep, maintain, and use and to operate thereon railway cars.

The right to go on Fischer road is not to be exercised unless the grantees are prevented by legal proceedings from building on Jefferson avenue easterly of said Fischer road.

2. The track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles and carriages along said highway, and shall be laid along one side of the said street in so far as the same is feasible. And the said grantees shall construct and have the said railway in operation within two years from the date hereof.

3. The said grantees and their assigns shall maintain proper and safe crossings at all crossroads and streets and at the main or principal entrance to all farms along its line.

4. The rate of fare for a single passenger shall not exceed two cents per mile, but said grantees or their assigns shall be entitled to charge not to exceed five cents for one continuous trip over any portion of the line within the said village.

5. When the said grantees, their associates or assigns shall have completed a railway to the easterly limits of Detroit, through cars shall be run each way to and from the said city limits at least four times each day, excepting Sunday, and the said grantees shall have said line to Detroit completed and in operation within two years from this date.

Provided, however, if the right of way is obtained through the Township of Grosse Pointe and Hamtramck, the road shall be con-

structed and in operation by July 1, 1891, to the Club House, so called.

6. If said grantees, their associates or assigns, shall desire to build and operate said line of railway or any part thereof, on a private way obtained by them lying substantially parallel to said Jefferson avenue or River road, on either side thereof, the same shall be considered as a compliance with the terms and requirements of this contract or consent.

7. The written consent of said grantees to this contract shall be filed with the clerk within ten days from this date.

S'g'd

E. G. MORAN, *President*.
ALEXANDER MORAN,
JOHN NELL,
JOHN McLEAN,
FRED G. MORAN,
EDWARD FISHER,
CHAS. BEYER, *Trustees*.

23 I, village clerk of the Village of Grosse Pointe, do hereby certify that the following is a true copy of the consent given to George Hendrie, Geo. S. Davis, Wm. B. Moran, John C. Donnelly, Strathearn Hendrie and Cameron Currie at the meeting of the village board held March 13, 1891.

Dated Grosse Pointe, March 13, 1891.

THEO. F. DAMEROW, *Clerk*.

EXHIBIT "C."

To the Village Board, Village of Grosse Pointe, in the Township of Grosse Pointe, County of Wayne, and State of Michigan.

GENTLEMEN: We hereby accept the consent and grant to construct, maintain and operate a railway in your village in the manner and form and upon the terms and conditions specified in said consent and grant given us this day.

In witness whereof we have hereunto set our hands and seals this 13th day of March, A. D. 1891.

GEORGE HENDRIE,
WM. B. MORAN,
GEO. S. DAVIS,
JOHN C. DONNELLY,
STRATHEARN HENDRIE,
CAMERON CURRIE.

Filed March 13th, 1891.

THEO. F. DAMEROW, *Clerk*.

EXHIBIT "D."

An ordinance granting consent, permission and authority to the
24 Detroit United Railway to construct, build, maintain and
operate a double track street railway on Jefferson avenue or
the Lake Shore road, so called, through the Village of Fair-
view from the westerly limits to the easterly limits thereof.

Whereas, on the ninth day of April, A. D. 1891, authority was
granted by the Township Board of the Township of Grosse Pointe
to certain persons, their associates and assigns, to construct and
operate a line of railway on Jefferson avenue or the Lake Shore road,
through said township, which said line of railway has been con-
structed in accordance with the terms of said grant, partly on the
said highway and partly on private rights of way owned or leased
by said railway, and is not being maintained and operated by the
Detroit United Railway as successor or assignee of said original
grantees in said franchise of 1891; and,

Whereas, since the granting of said franchise the Village of Fair-
view has become incorporated and comprises a portion of the former
Township of Grosse Pointe, through which said grant or franchise
extended, which said village did on or about the sixth day of Decem-
ber, A. D. 1904, grant permission to said Detroit United Railway to
construct, maintain and use tracks connecting its car barns in said
village with the main tracks in said avenue, and to construct certain
suitable "Y" tracks and loops; and,

Whereas, the said village has caused the said Jefferson avenue to
be widened so as to embrace the private rights of way of the said
railway, and it is now proposed by said village to pave said highway
known as Jefferson avenue or Lake Shore road, and it is desired by
said village that the tracks of said railway maintained and used
under said above-mentioned grant or franchise be moved into the
center of the highway, and the said Detroit United Railway
25 has agreed under certain conditions to move said tracks to
the center of the highway at its own expense; therefore,

The Village of Fairview ordains:

SECTION 1. That consent, permission and authority is hereby
given, granted and duly vested in the Detroit United Railway, a cor-
poration organized and existing under the laws of the State of
Michigan, its successors and assigns, to construct, maintain and oper-
ate a double track for a street railway with all the necessary and con-
venient tracks for turnouts, side tracks and switches, and connections
in, along and upon Jefferson avenue or the Lake Shore road, so
called, through said village from the westerly limits thereof to the
easterly limits thereof, together with the necessary poles and wires
and all other appurtenances belonging or appertaining to a street
railway operated by electricity by means of the overhead trolley
system, the same to keep, maintain and operate thereon a line of
street railway for and during the term hereinafter specified and in
the manner and upon the conditions hereinafter set forth.

SEC. 2. The said tracks shall at the expense of the said grantee be moved from their present location at the side of the highway to the center thereof, where they shall be laid to conform to the standard gauge and with the same distance between the tracks as is now adopted in the City of Detroit, and shall be laid to such grade as may be established by the said village, and as nearly as may be, flush with the surface of the pavement at the intersection of cross streets. A space of eighteen feet in width is reserved for said tracks between cross streets east of the St. Jean road, which shall be marked off at the expense of the village by stone coping or curb from the paved portion of the streets, and the same to be maintained as a grass lawn or plat by said grantee and graded up flush with the top of the rails of its said tracks thereon. The said grantee shall pave the space between the outer rails of its tracks between the city limits and the easterly line of Hillger avenue and at intersecting streets east of Hillger avenue, with cedar block pavement on a stone foundation, and shall thereafter keep up and maintain the same. So much of said tracks as are paved as above provided shall be laid with deep seven-inch "T" girder rails, and the work of moving said tracks to the center of the highway and grading and paving as herein provided shall be done at the same time, as nearly as may be, that the said village grades or paves the other portion of the said Jefferson avenue or Lake Shore road.

SEC. 3. The railway constructed, maintained and operated under this grant, and the above described grant of 1891, shall be operated by the overhead trolley wire system of electricity, or such other modern rapid power as said grantee may from time to time deem expedient, and the cars and other equipment shall be modern and made comfortable and sufficient for the accommodation of the public. The cars of said grantee shall at all times be entitled to the tracks, and any vehicle upon the tracks of said railway shall turn out so as to leave said tracks unobstructed. Said grantee shall be entitled to haul trains for construction, freight or other purposes for general traffic, provided, the same shall not interfere with regular passenger traffic. The rate of fare for a single ride for a continuous trip for any distance in one direction on said Jefferson avenue within the Village of Fairview shall be five (5) cents, provided that for extra or special cars or trains not on the time card, said grantee, its successors or assigns may charge special rates.

SEC. 4. Nothing in this grant or agreement shall be construed as altering, amending or repealing the grant or franchise of 1891 or the right granted said Detroit United Railway by the resolution of December 6th, 1904, above described, except as the same is necessarily altered by the requirements as to paving herein contained and by placing said tracks in the center of the highway, and said grants shall remain in full force and effect.

SEC. 5. The terms, conditions and agreements herein contained shall constitute a binding contract between said Village of Fairview and said corporation, its successors and assigns, for a period of thirty (30) years from the third day of May, 1905, and the same shall take effect upon its acceptance in writing by said corporation, if said

acceptance is filed within thirty (30) days from the date of its passage with the clerk of said village, it being expressly agreed that the said Detroit United Railway, by its acceptance of this grant relinquishes to said village all of its perpetual rights and its rights to the private rights of way above referred to, and which are now embraced within the limits of the said avenue.

STATE OF MICHIGAN,
Village of Fairview, ss:

I, Fred F. Smith, village clerk of the Village of Fairview, in the County of Wayne and State of Michigan, do hereby certify that the foregoing annexed paper is a true copy of an ordinance adopted by the village council at a session held this third day of May, 1905, as appears from the Journal of said board remaining in the office of the clerk of the said village; that I have compared the same with the original in my office and the same is a correct transcript therefrom and of the whole of said original.

28 In witness whereof I hereby set my hand and affix the corporate seal of said village this third day of May 1905.

[SEAL.]

FRED F. SMITH.

Village Clerk.

Approved:

ALBERT H. WENDT, *President.*

EXHIBIT "F."

This indenture made this first day of November, A. D. 1892, by the Jefferson Avenue Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, party of the first part, and the Detroit Suburban Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, party of the second part.

Witnesseth, that the party of the first part, in consideration of the sum of one dollar (\$1.00) and of other valuable considerations, moving to it from the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned and transferred unto the said party of the second part, its successors and assigns, all the interest of the said party of the first part in, to and under all and singular the rights, privileges and franchises granted by the authorities of the Village of Grosse Pointe and the Townships of Grosse Pointe, Hamtramck, Wayne County, Michigan, under and by virtue of certain grants or concessions evidenced by several instruments in writing specifically described as follows, to-wit:

29 First, The resolution or ordinance adopted by the Village Board of the Village of Grosse Pointe, on the 13th day of March, 1891, granting to said George Hendrie, William B. Moran, John C. Donnelly, George S. Davis, Strathearn Hendrie and Cameron Currie, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in,

along and upon Jefferson avenue, from the westerly line of said village to the easterly limits thereof, and northerly on Fisher road and easterly on a private way substantially parallel to Jefferson avenue.

Second. The resolution or ordinance adopted by the Township Board of the Township of Grosse Pointe, on the 8th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said last named parties, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue in said township.

Third. The resolution or ordinance adopted by the Township Board of the Township of Hamtramck on the 14th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said last named parties, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue, in said township. Which said concessions, consents and authorities were by the said George Hendrie, William B. Moran, John C. Donnelly, George S. Davis, Strathearn Hendrie and Cameron Currie, duly transferred and assigned to the said party of the first part on the 8th day of June, A. D. 1891, by an instrument in writing duly executed by the said parties.

Fourth. Also all rights of way owned and obtained directly or indirectly by the said party of the first part from individuals or persons, along and adjacent to said Jefferson avenue in the
30 Townships of Grosse Pointe and Hamtramck, and in the Village of Grosse Pointe, whether said rights of way be evidenced by writing or are by parol consent of the owners of the premises.

To have and to hold the same unto the said party of the second part, its successors and assigns forever.

And the party of the second part agrees with the parties of the first part that it will use the rights, privileges and ordinances hereby granted in accordance with the said resolution or ordinances hereinbefore mentioned.

In witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

THE JEFFERSON AVENUE RAILWAY
COMPANY,

GEO. HENDRIE, *President*.

CAMERON CURRIE, *Secretary*.

DETROIT SUBURBAN RAILWAY COM-
PANY.

W. C. McMILLAN, *President*.

GEO. H. RUSSELL, *Secretary*.

[SEAL.]

[SEAL.]

EXHIBIT "G."

This indenture made this eighth day of June, A. D. 1891, by and between George Hendrie, William B. Moran, John C. Donnelly, George S. Davis, Strathearn Hendrie, Cameron Currie and Sidney T. Miller, all of Detroit, Michigan, parties of the first part, and the Jefferson Avenue Railway Company, a corporation organized under and by virtue of the laws of the State of Michigan, party of the second part.

Witnesseth.

Said parties of the first part, in consideration of the sum of ten thousand and no/100 dollars to them paid by the party of the second part, the receipt whereof is hereby acknowledged, have
31 granted, bargained, sold, assigned and transferred unto said party of the second part, its successors and assigns, all and singular the rights, privileges and franchises granted by the authorities of the Village of Grosse Pointe and the Townships of Grosse Pointe and Hamtramck, Wayne County, Michigan, under and by virtue of certain grants or concessions evidenced by several instruments in writing more specifically described as follows, to-wit:

First. The resolution or ordinance adopted by the Village Board of the Village of Grosse Pointe, on the thirteenth day of March, 1891, granting to said parties of the first part, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue from the westerly line of said village to the easterly limits thereof, and northerly on Fisher road and easterly on a private way substantially parallel to Jefferson avenue.

Second. The resolution or ordinance adopted by the Township Board of the Township of Grosse Pointe on the 8th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said parties of the first part, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue in said township.

Third. The resolution or ordinance adopted by the Township Board of the Township of Hamtramck on the 14th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said parties of the first part, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue, in said township.

Fourth. Also all rights of way owned or obtained by said
32 first parties from individuals or persons along or adjacent to said Jefferson avenue in the Townships of Grosse Pointe and Hamtramck or the Village of Grosse Pointe, whether said rights of way be evidenced by writing or are by patrol consent of the owners of the premises.

To have and to hold the same unto said party of the second part, its successors and assigns forever.

And the party of the second part agrees with the parties of the first part that it will use the rights, privileges and ordinances hereby granted in accordance with the said resolution or ordinances hereinbefore mentioned.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

GEO. HENDRIE,
WM. B. MORAN,
GEO. S. DAVIS,
JOHN C. DONNELLY,
STRATHEARN HENDRIE,
CAMERON CURRIE,
SIDNEY T. MILLER,
JEFFERSON AVENUE RAILWAY
COMPANY,

By STRATHEARN HENDRIE,
Gen'l Man.

EXHIBIT "H."

This indenture made this first day of November, A. D. 1892, by and between George Hendrie, William B. Moran, John C. Donnelly, George S. Davis, Strathearn Hendrie, Cameron Currie and Sidney T. Miller, all of Detroit, Michigan, parties of the first part, and the Detroit Suburban Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, party of the second part.

Witnesseth: That the said parties of the first part, in consideration of the sum of one dollar (\$1.00) and of other valuable consideration moving to them from the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned and transferred unto said party of the second part, its successors and assigns, all and singular the rights, privileges and franchises granted by the authorities of the Village of Grosse Pointe and the Townships of Grosse Pointe and Hamtramck, Wayne County, Michigan, under and by virtue of certain grants or concessions evidenced by several instruments in writing, more specifically described as follows, to-wit:

First. The resolution or ordinance adopted by the Village Board of the Village of Grosse Pointe, on the 13th day of March, 1891, granting to said parties of the first part, their associates and assigns, permission, consent, and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue from the westerly line of said village to the easterly limits thereof, and northerly on Fisher road and easterly on a private way substantially parallel to Jefferson avenue.

Second. The resolution or ordinance adopted by the Township Board of Township of Grosse Pointe on the 8th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said parties of the first part, their associates and assigns, permission, consent and authority to construct, main-

tain, operate and use a railway in, along and upon Jefferson avenue in said township.

Third. The resolution or ordinance adopted by the Township Board of the Township of Hamtramck on the 14th day of April, 1891, and assented to and ratified by the highway commissioner of said township, granting to said parties of the first part, their associates and assigns, permission, consent and authority to construct, maintain, operate and use a railway in, along and upon Jefferson avenue in said township.

Fourth. Also all rights of way owned or obtained by said first parties from individuals or persons along or adjacent to said Jefferson avenue, in the Townships of Grosse Pointe and Hamtramck or the Village of Grosse Pointe, whether said rights of way be evidenced by writing or are by parol consent of the owners of the premises.

To have and to hold the same unto the said party of the second part, its successors and assigns forever.

And the party of the second part agreed with the parties of the first part that it will use the rights, privileges and ordinances hereby granted in accordance with the said resolutions or ordinances hereinbefore mentioned.

In witness whereof the parties hereto have hereto set their hands and seals the day and year first above written.

GEO. HENDRIE.	[L. s.]
WM. B. MORAN,	[L. s.]
GEO. S. DAVIS.	[L. s.]
JOHN C. DONNELLY.	[L. s.]
STRATHEARN HENDRIE.	[L. s.]
CAMERON CURRIE.	[L. s.]
SIDNEY T. MILLER.	[L. s.]

In presence of:

CHARLES T. WILKINS.

EXHIBIT "I."

This indenture made and entered into this thirty-first day of December, A. D. 1900.

Between the Detroit Suburban Railway Company, a street railway corporation organized under the laws of the State of Michigan, party of the first part,

And The Detroit United Railway, also a street railway corporation organized and doing business under the laws of the State of Michigan, party of the second part,

Witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar and other good and valuable considerations to it in hand paid, receipt whereof is hereby confessed and acknowledged, does by these present- grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part and its successors and assigns forever, all of its lines of street railway,

street railway tracks, and all rights, privileges, franchises and immunities thereto belonging or in any wise appertaining, now owned, possessed and enjoyed by the said party of the first part in the City of Detroit and in the Townships of Springwells, Greenfield and Hamtramck, and in the Villages of Grosse Pointe, Highland Park and Springwells, or wherever situated, in the County of Wayne, said State; also all rolling stock, cars, car equipments, motors, tools, implements and equipments; also all wires, poles, and other material used in and forming a part of the overhead construction and electrical equipment; also all and every other kind of personal property of whatever name or nature, owned and possessed by the said party of the first part in connection with the construction, maintenance and operation of the lines of street railway, or to be used in the construction, maintenance and operation of the lines of railway hereinabove described and conveyed; also all power house and repair equipment, material and plant; also all of the following described lands and real estate with the buildings and improvements thereon, to-wit:

36 Three and fifty-nine hundredths (3.59) acres in Private Claim 322, more fully described in a deed recorded in the office of the Register of Deeds for Wayne County, Michigan, in liber 387 of Deeds, page 392, said parcel of land being situated at the northeast corner of Connors Creek road and Mack road.

Also one (1) acre in Private Claim 388, situated near the junction of said Mack road and the Connor's Creek road, and easterly of and adjoining the parcel of land last above described, and being more fully described in a deed recorded in said Registry of Deeds, in liber 428 of Deeds, on page 555.

Also all contract and leasehold rights owned, enjoyed and possessed by said party of the first part; also all rights, privileges or franchises owned, possessed and enjoyed by the said party of the first part under contracts and grants made by the City of Detroit, the Townships of Hamtramck, Greenfield, Grosse Pointe and Springwells, the Villages of Grosse Pointe and Highland Park, either directly to the said party of the first part or to its grantors, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the property as above described, with the appurtenances, unto the said party of the second part and to its successors and assigns forever, and the said party of the first part, its successors and assigns, does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of a good title to the property hereby granted, and that it and its successors and assigns will warrant and defend the same against all lawful claims whatsoever, subject, however, to certain mortgage liens thereon, the amounts of which the
37 said party of the second part hereby assumes and agrees to pay as a part of the consideration for said property.

In witness whereof the Detroit Suburban Railway Company aforesaid has caused its corporate seal to be hereunto affixed and these

presents to be subscribed by its vice-president and secretary the day and year first above written.

DETROIT SUBURBAN RAILWAY
COMPANY,

By MICHAEL BRENNAN, *Vice-President*.
JOS. BAMPTON, *Secretary*.

[SEAL.]

Signed, sealed and delivered in the presence of:

WM. C. HOPPER,
C. B. KING.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 31st day of December, A. D. 1900, before me personally appeared Michael Brennan and Joseph Bampton, to me personally known, who being by me duly sworn, did say that they are the vice-president and secretary respectively of the Detroit Suburban Railway Company; that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Michael Brennan and Joseph Bampton acknowledge the said instrument to be the free act and deed of said corporation.

[STAMP.]

A. E. PETERS,
Notary Public, Wayne County, Michigan.

38

EXHIBIT "J."

Detroit City Railway Company.

(Approved November 24, 1862.)

Whereas, Cornelius S. Bushnell, John A. Griswold, Nehemiah D. Sperry, Eben N. Wilcox, their associates, successors and assigns, propose to organize as a body politic and corporate under a charter from the Legislature of Michigan, or under the "Act to provide for the construction of Train Railways," approved February 13, 1855 (Laws of 1885, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the City of Detroit, street railways; therefore,

Be it ordained by the Common Council of the City of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in Eben N. Wilcox, and his associates, who may be approved by the Common Council, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay a single or double track for railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the City of Detroit, hereinafter mentioned, and the

same to keep, maintain and use, and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner, and upon the condition set forth, in this ordinance (as amended December 27, 1862).

SEC. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as
39 herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson avenue through Fort street, to the western limits of the city; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street, and through Fort street to the western limits of the city; and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the said City of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance. And, provided, the corporation does not assent, in writing, within thirty days after the passage of said resolution of the Council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense. Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and from each of them, one continuous route to Jefferson avenue. Provided, always, that said railway down Gratiot street may be continued to Woodward avenue through State street or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees or their assigns, under this ordinance may select (as amended January 12, 1863).

SEC. 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a double track the inside rail of each track shall be laid a sufficient distance from
40 the center of the street to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels. Provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first. And provided, further, that in all streets which are not paved, or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the Common Council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any time thereafter, build a second track, so that they do not interrupt the running of their cars on the first completed track. Provided, the consent of the Common Council is first obtained (as amended January 11, 1875).

SEC. 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees, and in all streets, or parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, and their assigns shall

41 be required to keep the surface of the streets inside the rails, and for two feet four inches outside thereof in good order and repair, and all snow, ice, dirt and filth cleared and removed from the same, at the expense of the grantees. Provided, however, that upon the paved portions of said streets the materials for repaving shall be supplied at the expense of the city (as amended January 12, 1863).

SEC. 5. The routes of all said railways shall commence in the Woodward avenue road, at Campus Martius, from thence running on their several courses to the outer limits of the city. Provided, that in collecting fare, those portions between Atwater through Brush or Beaubien streets and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, shall pay only one fare (as amended January 12, 1863).

SEC. 6. Said railway on Woodward avenue, or Witherell street to Park lot sixty-two, through Jefferson avenue to the eastern limits and through Jefferson avenue to Woodbridge, through Woodbridge to Third and up Third to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapoton farm shall be completed within three years from and after the thirty-first day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm, through Michigan avenue to Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require. Provided, that no such railway shall be required to be laid through any part of such

42 routes which shall not be worked up to the established grade thereof until the city shall have completed such work.

SEC. 7. The cars to be used on said railway shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the Common Council shall prescribe. Provided always, that said Common Council will not require them to run regular cars oftener than once in twenty minutes during the fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and

twelve hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railways shall be run for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall the Common Council shall prescribe. Provided, always, that said cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

SEC. 8. The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

SEC. 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet except in cases of accident or at stations or for the purpose of connecting two cars together.

SEC. 10. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SEC. 11. When the conductor of any car is required to stop
43 at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 12. The grantees, or their assigns, shall employ, careful, sober and prudent agents, conductors and drivers to take charge of their cars while on the road, and it will be the duty of such agents, conductors and drivers to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

SEC. 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SEC. 14. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

SEC. 15. The cars shall, at all times, be entitled to the track, and any vehicle upon the track of said railways shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so shall be liable to a fine not exceeding five dollars on conviction before the Recorders' Court of said City of Detroit; and costs of prosecution shall not be at the expense of the city.

SEC. 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front and a green light in the rear.

SEC. 17. Wherever gas or water pipes or sewers are now laid in the streets herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the Gas Company and the Board of Public

44 Works, to take up or remove said pipes or sewers, in such manner as not unnecessarily to damage or injure said railways or their use, without claim against the city, Gas Com-

pany, or Board of Public Works; and the Common Council expressly reserves to itself the right hereafter to lay down, or permit to be laid down and repaired in said streets, gas or water pipes, and sewers whenever the public or private convenience may require and said gas or water companies or private individuals who shall take up pavements for the purposes aforesaid being always required, as by the present city ordinance to restore the pavement in the streets to its former condition.

SEC. 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the Council does not extend the time; Provided, that if said grantees shall be delayed by the order or injunction of any Court, and said order or injunction shall not be obtained at the instance or by the connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance (as amended December 27, 1862).

SEC. 19. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways.

SEC. 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

45 SEC. 21. Said grantees shall, on or before the tenth of January, A. D. 1863, deposit with the Controller of said city the sum of five thousand dollars in money, or in United States stocks, or in treasury notes, bearing seven and three-tenths per cent interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete on or before the first day of October, A. D. 1863; and if the said railways shall not then be completed the sum so deposited shall be forfeited to the city. Provided, however, that if said grantees or their assigns, cannot procure the requisite amount of rail of the Philadelphia or other suitable pattern to build said railways within the time specified, with a suitable and competent force, then the time shall be extended until such rail can be obtained and laid with a suitable and competent force; And Provided, further, that the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rail cannot be procured (As amended January 12, 1863).

SEC. 22. The said grantees and their assigns, shall pay to the treasurer of the City of Detroit, annually, fifteen dollars on each and every passenger or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license for the use of the city, after the term of five years from and after this date.

SEC. 23. Whenever the said grantees, their successors or assigns,

shall have organized themselves into a body politic and corporate, under the said act of the Legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation, without any further action, consent, permission or authority of the Common Council whatever.

46 SEC. 24. All ordinances, or parts of ordinances heretofore made, ordained and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

SEC. 25. Any wilful violation of or failure to comply with the provisions of this ordinance by said Railway Company, or by any agent, conductor, driver, or any person in the employ of said company, shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of any such fine and costs the Court may make a further sentence that the offender be committed to the County Jail or to the Detroit House of Correction until the payment thereof, for any period of time not exceeding six months (as amended March 29, 1864).

SEC. 26. Approved August 19, 1863. Permission is hereby given to the Detroit City Railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot avenue, from Woodward avenue to Russell street, instead of and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in Section 21 of said ordinance.

SEC. 27. As a condition of the acceptance of this permission, the said Detroit City Railway may and shall complete its road and track on Fort street, Michigan avenue and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864; and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

SEC. 28. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its
47 track a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said track and said plank road; and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the "T" rail, which is used for street railways and weighs not less than thirty-three pounds to the yard.

SEC. 29. The said railway is hereby authorized to extend its tracks and run its cars through Third street southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railway Company.

SEC. 30. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue and Gratiot street, shall each be considered and run as one route, and subject its passengers to the payment of a

single fare each. Provided, however, that all cars running north of Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue shall be considered as making a portion of each of said routes, respectively.

SEC. 31. The Detroit City Railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real estate owners as are affected thereby, may and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood Cemetery, and run its cars thereon at such times as will accommodate the public; provided, however, no person shall be charged more than one cent either way on this track; and said railway are also authorized to run a track and their cars to Mt. Elliott Cemetery, along Mount Elliott avenue and charge the same rate of fare as to the said Elmwood Cemetery.

48 SEC. 32. The Detroit City Railway is hereby authorized to build its tracks and run its cars from its track on Jefferson avenue upon and along Randolph street southerly to Atwater street, and thence along Atwater street easterly to Brush street; and, as said track approaches the Detroit & Milwaukee depot the said railway may turn the same onto the southerly side of said Atwater street so as to run said cars up to the sidewalk in front of the office buildings of the Detroit & Milwaukee Railway Company (approved October 7, 1863).

SEC. 33 (Approved January 4, 1864). Permission is hereby given to the Detroit City Railway to build its road and track on and through Fort street, from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street as aforesaid.

SEC. 34. Permission is also hereby given to said railway to build its road and track along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city; and such building shall relieve said railway from its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street, from the railroad crossing through Stanton street and River road, to the city limits, with "T" rails similar and of equal weight to that used on Michigan avenue.

SEC. 35. The road and track of said railway, from said westerly limits through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall
49 then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

SEC. 36. The Detroit City Railway is authorized to connect their car depot on Second street with their main track by constructing a branch track from their main track to said car house, either through

Second street or from Third street through the alley between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St. Antonie street with their tracks on Jefferson avenue by constructing a branch track from St. Antoine street to said depot and stables; such branch track to be a single track only, and to intersect Jefferson avenue track at right angles and by means of turn-tables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenues (as amended December 15, 1874).

SEC. 37. The time for completing the road of said company on Gratiot street is hereby extended to November 1, 1865; provided, however, that said company shall extend their track as far as Chene street on or before the twentieth day of November next (Approved October 8, 1864).

SEC. 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the Plank Road Company, in such position as shall be agreed on between the Railway and Plank Road Companies; provided, however, that unless the line agreed on shall be along the center of said street, such agreement shall be first reported to and approved by the Council (Approved October 8, 1864).

SEC. 40. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and throughout Jefferson avenue, 50 in the City of Detroit; provided, expressly, that if hereafter the pavement on said avenue shall be extended or said avenue shall be ordered repaved the said grantee or company shall contemporaneously with such paving or repaving at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair; and the two inner rails shall be laid equi-distant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the Common Council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the Common Council (Approved July 8, 1873).

SEC. 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the City of Detroit. It is, however, expressly understood and provided, that, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the

portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of said tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair; and the two
 51 inner rails of its said track shall be laid equi-distant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the Common Council, and the expense thereof shall include the cost of paving, repaving, and material for the same, grading, excavating, removing of earth, and all other necessary work, and the whole shall be done in a manner satisfactory to the Common Council.

SEC. 42. Any provision or condition in the ordinance creating said company, or of any ordinances amendatory thereof, contravening the provisions of the foregoing section, are hereby repealed.

EXHIBIT "K."

Section 5 of ordinance approved November 14, 1879:

SEC. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from this date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily on such occasions as the Common Council may, by resolution, from time to time, designate, to accommodate public processions or any other like convenience.

EXHIBIT "L."

Section 1 and Paragraph "D" of Section 4 of ordinance approved January 3, 1889, to Detroit City Railway:

"SECTION 1. Subject to all the provisions and requirements of Chapter 98 of the Revised Ordinances of the City of Detroit for the year 1884, and of amendments thereof and supplements
 52 thereto and of an ordinance entitled, An Ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit City Railway is hereby authorized and permitted to lay, construct, use and operate a street railway, with convenient tracks for turn-outs, side-tracks, curves and switches in and through the following streets and avenues in the City of Detroit, and the same to keep, maintain and use and to operate thereon street railway cars in the manner and subject to the conditions herein contained and to all the requirements and conditions set forth in Chapter 98 of the Revised Ordinance of 1884, and in said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present

track on Congress street east turns on to Randolph street connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street east to Mt. Elliott avenue; thence along said Mt. Elliott avenue to the Jefferson avenue double track; thence along said Jefferson avenue double track to the easterly limits of the city.

Also to extend its track on Cass avenue from where it now turns on to Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of the double track on said Jefferson avenue to the easterly limits of the City of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits
53 of the City of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also to lay, construct, use and operate a single street railway track in, along and through Mack street from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue so that cars may be brought through and over the same between the said two streets.

Also to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue near the bank of the Detroit River, running thence northerly along said Jos. Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence on, along and through Chene street in a northerly direction to the City Limits.

Also permission is hereby granted to the said Detroit City Railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed in the bridge and approaches thereto, to Belle Isle Park, to said park with all the privileges and rights which may be granted to any other street railway.

SECTION 4:

(D.) Such arrangements shall be made by said Company that within two months after this ordinance shall have been accepted by said company, it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock
54 in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the

rights of transfer and through carriage provided for in paragraphs "A," "B" and "C" of this section.

EXHIBIT M.

Whereas, section 6 of an ordinance approved January 3, 1889, being part of chapter 109 of the Revised ordinances of the City of Detroit, for the year 1890, provides that the right to make such rules, orders and regulation as may from time to time be deemed necessary to protect the interests, welfare and accommodation of the public in relation to the Detroit City Railway, its successors and assigns, is reserved to the Common Council of the City of Detroit, and,

Whereas, paragraph "D" of Section IV of said ordinance approved January 3d, 1889, with reference to said railway being part of chapter 109 of the Revised Ordinances of the City of Detroit for the year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight (8) tickets for twenty-five cents, to be good for transportation between certain hours of each day.

It is hereby ordained by the People of the City of Detroit.

SECTION 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns, to furnish and provide conductors on each and every car operated by the said company within the limits of the City of Detroit with tickets to be good for transportation between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m. each ticket to be good for transportation as provided for in said ordinance. (As amended February 26, 1895.)

SECTION 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductor or other duly
55 authorized agents, to any person or persons applying therefor upon each and every car operated by said company within the limits of the City of Detroit, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m. at the rate of eight tickets for twenty-five cents, each ticket to be good for one fare. (As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Detroit City Railway, its successors and assigns, shall neglect to provide tickets and refuses to sell to persons applying therefor, as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine when so imposed may be recovered from the person or corporation so convicted in an action at law in the proper court.

EXHIBIT N.

This indenture made the first day of December, in the year of our Lord one thousand eight hundred and ninety, between the Detroit City Railway, a corporation under the laws of Michigan, party of the first part, and The Detroit Street Railway Company, a corporation under the laws of Michigan, party of the second part.

Witnesseth: That in consideration of the sum of one dollar and for other valuable considerations, paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part doth by these presents bargain, sell, assign and transfer to the party of the second part, all the following described property:

56 First. All of the franchise rights, privileges and interests in which the party of the first part has any title or right.

Second. All of the rights of the first party to any rights of way, easements, licenses, leasehold interests, tracks, buildings, barns and stables.

Third. All of the horses, cars, rolling stock, tools, implements of all kinds, and all other personal property, of any kind whatsoever, belonging or in anywise appertaining to the party of the first part, wheresoever situated.

To have and to hold the said interests, goods, chattels, and effects of every kind whatsoever, to the said party of the second part, its successors and assigns, absolutely and to its and their use forever. And the party of the first part hereby covenants with the party of the second part that it is the legal owner of the said interests, goods, chattels, and effects; that they are free from all incumbrances, except certain mortgages assumed by the party of the second part; that it has a good right to sell the same, as aforesaid, and that it will warrant and defend the same against all legal claims and demands of all persons, except the before-mentioned mortgages.

In witness whereof the party of the first part has caused its corporate seal to be hereto attached and these presents to be executed by its vice-president and treasurer, they being thereunto duly authorized.

SIDNEY D. MILLER,

Vice-President.

STRATHEARN HENDRIE,

Treasurer.

In presence of

SIDNEY T. MILLER,

C. CURRIE. [SEAL.]

57 STATE OF MICHIGAN,
County of Wayne, ss:

On this 17th day of December, A. D. 1890, before me a notary public in and for said county, came Sidney D. Miller and Strathearn Hendrie to me known to be the same person who executed the fore-

going instrument and acknowledged that they executed the foregoing instrument freely for the purposes therein mentioned as vice-president and treasurer, respectively of the Detroit City Railway.

SIDNEY T. MILLER,

Notary Public, Wayne Co., Mich.

EXHIBIT O.

This indenture made the sixteenth day of September in the year of our Lord one thousand eight hundred and ninety-one between The Detroit Street Railway Company, a corporation organized under the laws of Michigan, party of the first part, and the Detroit Citizens' Street Railway Company, a corporation organized under the laws of Michigan, party of the second part,

Witnesseth. That in consideration of the sum of one (\$1) dollar and for other valuable considerations, paid by the party of the second part, the receipt whereof is acknowledged, the party of the first part doth by these presents bargain, sell, assign and transfer to the party of the second part, its successors and assigns, all of the following described property:

First. All of the franchise rights, privileges and interests in which the party of the first part has any title or right.

Second. All of the rights of the party of the first part to any right of way, easement, license, contract rights, leasehold
58 interest, tracks, buildings, barns and stables.

Third. All of the horses, cars, rolling stock, tools, implements of all kinds, and all other personal property, chattels, and chattels real of every kind whatsoever, belonging or in any wise appertaining to the party of the first part, wheresoever situated, except moneys and credits on hand, it being understood that the party of the first part shall and will pay the interest on its one million dollars of bonds up to the date of the delivery of this bill of sale.

To have and to hold the said properties, rights, goods, chattels and chattels real and effects of every kind whatsoever, to the said party of the second part, its successors and assigns, absolutely and to its and their use forever. And the party of the first part hereby covenants with the party of the second part that it is the legal owner of the said interests, goods, chattels, real and effects; that they are free from all incumbrances except a certain mortgage made to secure certain bonded indebtedness to Sidney D. Miller and William K. Muir, Trustees, dated January 2, 1890; that it has a good right to sell the same, as aforesaid; and that it will warrant and defend the same against all legal claims and demands of all persons, except the said mortgage.

In witness whereof, the party of the first part has caused its corporate seal to be hereto attached and these presents to be executed by its president and secretary, they being thereunto duly authorized.

DETROIT STREET RAILWAY COMPANY.

GEO. HENDRIE.

[L. S.]

CAMERON CURRIE.

[L. S.]

Signed, sealed and delivered in presence of

JOHN C. DONNELLY. [SEAL.]

CHAS. W. SMITH.

59 STATE OF MICHIGAN,
County of Wayne, ss:

On this 16th day of September, A. D. 1891, before me a notary public in and for said County came George Hendrie, president, and Cameron Currie, secretary of the company, described in the foregoing instrument, and acknowledged the same to be their act and deed and that they had executed the same freely, they being thereunto duly authorized.

[SEAL.]

CHAS. W. SMITH,
Notary Public, Wayne Co., Mich.

EXHIBIT P.

This indenture made and entered into this thirty-first day of December, A. D. 1900.

Between the Detroit Citizens' Street Railway Company, a street railway corporation organized under the laws of the State of Michigan, party of the first part,

And the Detroit United Railway, also a street railway corporation organized and doing business under the laws of the State of Michigan, party of the second part.

Witnesseth.

That the said party of the first part for and in consideration of the sum of One Dollar and other good and valuable considerations to it in hand paid, receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part and its successors and assigns forever all of its lines of street railway, street railway tracks and all rights, privileges, franchises and immunities thereto
60 belonging or in any wise appertaining, now owned, possessed and enjoyed by the said party of the first part in the City of Detroit and in the Townships of Springwells and Greenfield and Hamtramck, and in the villages of Grosse Pointe, Highland Park and Springwells, or wherever situate in the County of Wayne, said State, also all rolling stock, cars, car equipments, motors, tools, implements, and equipments; also all wires, poles and other material used in and forming a part of the overhead construction and electrical equipment; also all and every other kind of personal property of whatever name or nature, owned and possessed by the said party of the first part in connection with the construction, maintenance and operation of the lines of street railway, or to be used in the construction, maintenance and operation of the lines of railway hereinabove described and conveyed; also all power house and repair equipment, material and plant; also all the following described lands and real estate with the buildings and improvements thereon, to wit:

(Description of the lands described *are* omitted.)

Also all contract and leasehold rights owned, enjoyed and possessed by said party of the first part; also all rights, privileges or franchises owned, possessed and enjoyed by the said party of the

first part under contracts and grants made by the City of Detroit, the Townships of Springwells, Greenfield and Hamtramck and the Villages of Grosse Pointe, Grosse Pointe Farms, Highland Park and Delray, either directly to the said party of the first part or to its grantors, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To have and to hold the property as above described with the appurtenances unto the said party of the second part and to its successors and assigns forever, and the said party of the first
61 part, its successors and assigns, does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is well seized of a good title to the property hereby granted, and that it and its successors and assigns will warrant and defend the same against all lawful claims whatsoever, subject however to certain mortgage liens thereon, the amounts of which the said party of the second part hereby assumes and agrees to pay as a part of the consideration for said property.

In witness whereof the Detroit Citizens' Street Railway Company aforesaid has caused its corporate seal to be affixed hereunto, and these presents to be subscribed by its vice-president and secretary the day and year first above written.

DETROIT CITIZENS' STREET RAILWAY
COMPANY,

By MICHAEL BRENNAN,

Vice-President.

JOS. BAMPTON,

Secretary.

Signed, sealed and delivered in the presence of

[SEAL.]

WM. C. HOPPER.

STATE OF MICHIGAN,

County of Wayne, ss:

On this 31st day of December, A. D. 1900, before me appeared Michael Brennan and Joseph Bampton, to me personally known, who being by me duly sworn, did say that they are the vice-president and secretary respectively of the Detroit Citizens' Street Railway Company; that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed

and sealed on behalf of said corporation by authority of its
62 Board of Directors, and the said Michael Brennan and Joseph Bampton acknowledged the said instrument to be the free act and deed of said corporation.

A. E. PETERS,

Notary Public, Wayne County, Mich.

EXHIBIT Q.

DEPARTMENT OF STATE,
Lansing, ss:

I, Justus S. Stearns, Secretary of State of the State of Michigan, the officer, who, under the constitution and laws of said State, is duly constituted the keeper of the records of Articles of Incorporation of certain companies incorporated under the laws thereof, and the records of all papers relating to the creation of such incorporated companies, and empowered to authenticate exemplifications of the same, do hereby certify, that the annexed instrument has been carefully compared by me with the original now in my official capacity as Secretary of State, and found to be a true and correct exemplified copy of articles of incorporation, Detroit United Railway, filed in this office on the Thirty-first day of December, that said exemplification is in due form and made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I have hereunto attached my official signature and the Great Seal of the State of Michigan, at Lansing, this thirty-first day of December, in the year of our Lord, nineteen hundred.

[SEAL.]

(Signed)

J. S. STEARNS,
Secretary of State.

63 Know all men by these Presents, that we, the undersigned, Richard T. Wilson, M. Orme Wilson, James M. Edwards, Jere C. Hutchins, Albert E. Peters, Henry A. Everett and Ralph A. Harman, desiring to become incorporated under the provisions of Act number 35 of the Public Act of 1867, entitled "An Act to provide for the formation of Street Railway Companies" and the various Acts amendatory thereof, and supplementary thereto, contained in chapter 168 of the Compiled Laws of the State of Michigan, of 1897, do hereby make, execute and adopt the following Articles of Association, to wit:

Article I.

The name by which this corporation shall be known in law is, Detroit United Railway.

Article II.

The purposes for which this corporation is formed, are, to acquire, own, maintain, operate and use the street railways, property and franchises now owned, maintained and operated by the Detroit Electric Railway; The Detroit, Fort Wayne & Belle Isle Railway; The Detroit Citizens' Street Railway Company and the Detroit Suburban Railway Company, in the City of Detroit and adjacent townships and villages in the County of Wayne and adjacent counties, and to construct, own, maintain, operate and use other street railways in said City and Counties, Townships and Villages.

Article III.

The amount of the Capital Stock of this corporation is Twelve Million Five Hundred Thousand Dollars divided into One
 64 Hundred and Twenty-five thousand shares of the par value of One Hundred Dollars each.

Article IV.

The names of the stockholders of this corporation, and their respective residences, and the number of shares held by each, are as follows:

Name.	Residence.	No. Shares.
Richard T. Wilson,	New York, State of New York.....	244
M. Orme Wilson,	New York, State of New York.....	1
James M. Edwards,	New York, State of New York.....	1
Jere C. Hutchins,	Detroit, State of Michigan.....	1
Albert E. Peters,	Detroit, State of Michigan.....	1
Henry A. Everett,	Cleveland, State of Ohio.....	1
Ralph A. Harman,	Cleveland, State of Ohio.....	1

Article V.

The city in which the offices for the transaction of the business of this corporation shall be located in the City of Detroit, aforesaid, and its business is to be carried on in said City of Detroit, and the adjacent townships in the County of Wayne, and the counties adjacent *in* said County of Wayne.

Article VI.

The term of the existence of this corporation is to be thirty years from the date hereof.

Article VII.

The number of Directors of this corporation is seven, and the names of those who shall be directors for the first year are: Richard T. Wilson, M. Orme Wilson, James M. Edwards, Jere C. Hutchins, Albert E. Peters, Henry A. Everett and Ralph A. Harman.

65 In witness whereof, we have hereunto set out hands and seals this 28th day of December, A. D. 1900.

RICHARD T. WILSON.	[L. S.]
M. O. WILSON.	[L. S.]
JAS. M. EDWARDS.	[L. S.]
JERE C. HUTCHINS.	[L. S.]
ALBERT E. PETERS.	[L. S.]
HENRY A. EVERETT.	[L. S.]
RALPH A. HARMAN.	[L. S.]

STATE OF MICHIGAN,
 County of Wayne, ss:

On this twenty-ninth day of December, A. D. 1900, before me a Notary Public in and for said county personally appeared Jere C.

Hutchins and Albert E. Peters known to me to be the Jere C. Hutchins and Albert E. Peters named in and who executed the foregoing instrument and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

ALEXANDER MUNRO,

Notary Public, Wayne County, Michigan.

STATE OF NEW YORK,

City and County of New York, ss:

Be it remembered that on this twenty-eighth day of December, A. D. 1900, before me the undersigned a Commissioner of Deeds for the State of Michigan, duly commissioned and empowered to take acknowledgments of deeds according to the laws of said State, personally appeared Richard T. Wilson, M. Orme Wilson, and

James M. Edwards, known to me to be the persons named in 66 and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein named.

[SEAL.]

EDWIN F. COREY,

Commissioner of Deeds for the State of Michigan.

STATE OF OHIO,

County of Cuyahoga, ss:

Be it remembered that on this twenty-ninth day of December, A. D. 1900, before me the undersigned, a Commissioner of Deeds for the State of Michigan, duly commissioned and empowered to take acknowledgments of deeds according to the laws of said State, personally appeared Henry A. Everett and Ralph A. Harman, both known to me to be the persons named in and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

[SEAL.]

JAMES WADE,

Commissioner of Deeds for the State of Michigan, Appointed by the Governor of the State of Michigan, in and for the State of Ohio, Residing in the City of Cleveland, Cuyahoga County, Ohio.

STATE OF NEW YORK,

County of New York, ss:

Richard T. Wilson, M. Orme Wilson and James M. Edwards being first duly sworn, make oath and say that they are three of the directors named in the foregoing Articles of Association of the Detroit United Railway, and that Twenty-five Thousand Dollars of the capital stock thereof have been actually subscribed, and that Six Thousand Two Hundred and Fifty Dollars of the amount so subscribed have been actually paid in cash to the directors named in said Articles.

RICHARD T. WILSON.

M. O. WILSON.

JAS. M. EDWARDS.

Subscribed and sworn to before me this 28th day of December,
A. D. 1900.

[SEAL.]

EDWIN F. COREY,
Commissioner for the State of Michigan,
Office No. 56 Wall Street, New York City.

67 At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the
City of Lansing, on the Seventh day of February in the Year
of our Lord one thousand nine hundred and ten.

Present, the Honorable
Robert M. Montgomery, Chief Justice.
Russell C. Ostrander,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

This counsel coming on to be heard is argued by Mr. Hally for
plaintiff and by Messrs. Joslyn and Speed for defendant and sub-
mitted.

68 At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the
City of Lansing, on the First day of April, in the Year of our
Lord one thousand nine hundred and ten.

Present, the Honorable
Robert M. Montgomery, Chief Justice.
Russell C. Ostrander,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

In this cause an opinion is filed, in accordance with which an
order will hereafter be entered.

STATE OF MICHIGAN,
Supreme Court:

THE PEOPLE OF THE STATE OF MICHIGAN
 vs.
 THE DETROIT UNITED RAILWAY.

Before Montgomery, C. J., and McAlvay, Brooke, Blair and Stone
 JJ.

MONTGOMERY, C. J.:

The Detroit City Railway Company obtained a franchise from the city of Detroit in 1862. At that time the city limits were located at Mt. Elliott Avenue. In 1885, by amendment of the charter, the city limits were extended to Baldwin Avenue. In 1889 an ordinance was passed by the council and accepted by the Detroit City Railway Company providing for the sale of working men's tickets, so-called, eight for twenty-five cents during certain hours of the day, good over any of the its lines in said city for a single fare. This ordinance also gave the right to the company to extend its double track on Jefferson Avenue to the easterly limits of the city of Detroit. The Detroit City Railway Company continued to operate the line until 1890. Its rights and franchises were subsequently assigned to the defendant. A later ordinance imposes the duty of keeping these working men's tickets on sale by conductors.

The defendant subsequently purchased a street railway located wholly without the city limits and maintained under authority of a franchise from the Township of Grosse Pointe and the Village of Fairview. In 1907 the city limits of Detroit were extended to include a large portion of this territory.

These two cases were brought to enforce penalties in the one case for refusing to accept a ticket good in the city of Detroit for passage over this last named territory, and the other to recover a penalty for failure to keep tickets entitling a passenger to ride over this territory from any point in the city on sale. The question in each case is therefore whether the requirement of the ordinance of 1889 that passengers should be conveyed to any point in the city limits binds the defendant, as assignee of the Detroit City Railway Company, to transport passengers to the easterly limits of Jefferson Avenue as extended, notwithstanding that the defendant company is the assignee of the franchise granted by Grosse Pointe township and approved by the village of Fairview.

It is the contention of the city that when the provision was made in the ordinance for transporting passengers anywhere within the city limits it means the city limits as they may from time to time be fixed.

On the other hand, the defendant contends that the defendant occupies the position of an assignee of the Grosse Pointe Railway Com-

pany, and that it is not, as to the railway in the late village of Fairview, an assignee of the Detroit City Railway Company.

There are two methods of extending street railways. One is by construction, and the other may be by purchase under Section 6448 of Compiled Laws of 1897. The purchased railway becomes as much a part of the system as does the railroad as constructed. So we think it after all gets back to the question of whether the real intent of this ordinance was to provide for single fares within the city limits as such limits should from time to time be fixed.

We think it not unreasonable to hold that this mutual contract was made in view of the power of the legislature of the state to increase or diminish the territory within the city, and that neither the city nor the company contemplated that in case of an extension of the lines of the company within the city, either by purchase or acquisition from another company, an increased fare should be demanded.

The case of West Bloomfield Township v. Detroit United Railway, 146 Mich. 198, involved a question not entirely dissimilar. In that case the company had contracted that the fare from any point in said township to the City of Detroit and vice versa should not exceed the rate then charged by the company from Pontiac and Detroit and vice versa. The company while in competition with another line maintained a fare of twenty-five cents. It subsequently purchased the competing line, and over the line passing through West Bloomfield increased the fare from Pontiac to Detroit to thirty-five cents. It was held that the language of the provision that the rate of fare from any point in the township to Detroit should at no time exceed the rate then charged from Pontiac to Detroit and vice versa, referred to the company mentioned in the franchise, and it included any line which that company or its assignee might at any time build or purchase.

A case almost on all fours with the case at bar is that of Indiana Railway Company v. Hoffman, 69 N. E. 399. Its reasoning is convincing, and we think the case should be followed.

The case presented does not involve in this view an interference with any vested right of the company as assignee of the Fairview Railway, but resolves itself simply into a question of the construction of the ordinance, and we construe the ordinance to include any street railway constructed or purchased by the defendant which shall be within the city of Detroit as the limits of said city may from time to time be fixed by the legislature.

The convictions are affirmed.

ROBERT M. MONTGOMERY.

FLAVIUS L. BROOKE.

J. W. STONE.

CHAS. A. BLAIR.

AARON V. McALVAY.

Endorsed: Filed April 1, 1910. Chas. C. Hopkins, Clerk.

- 73 At a Session of the Supreme Court at the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the
City of Lansing, on the Fifth day of April, in the Year of our
Lord one thousand nine hundred and ten.

Present, the Honorable

Russell C. Ostrander, Presiding Justice.

Frank A. Hooker,

Joseph B. Moore,

Aaron V. McAlvay,

Flavius L. Brooke,

Charles A. Blair,

John W. Stone,

Associate Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

On motion of William L. Carpenter, counsel for the respondent, ordered that the Clerk be directed not to enter judgment in the above entitled cause until the determination of a motion for a re-hearing, provided said motion, accompanied by a brief, is made, served and filed in this cause within ten days.

- 74 At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the
City of Lansing, on the Twenty-fifth of April, in the Year of
our Lord one thousand nine hundred and ten.

Present, the Honorable

Russell C. Ostrander,

Joseph B. Moore,

Aaron V. McAlvay,

Flavius L. Brooke,

Charles A. Blair,

John W. Stone,

Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

In this cause a motion for a re-hearing is duly submitted.

75 At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the
City of Lansing, on the Seventh day of May, in the Year of our
Lord one thousand nine hundred and ten.

Present, the Honorable

Russell C. Ostrander,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

In this cause a re-hearing is ordered, the same to be had at the
coming June Term, before the full Bench.

76 At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the City of Lansing,
on the First day of July, in the year of our Lord one thousand
nine hundred and ten.

Present, the Honorable

John E. Bird,
Russell C. Ostrander,
Frank A. Hooker,
Joseph B. Moore,
Aaron V. McAlvay,
Flavius L. Brooke,
Charles A. Blair,
John W. Stone,
Associate Justices.

No. 22727.

THE PEOPLE

vs.

DETROIT UNITED RAILWAY.

This cause coming on to be heard on a re-argument ordered by
the Court, is argued by Messrs. Carpenter and Joslyn for defend-
ant and by Mr. P. J. M. Hally for the people and submitted.

Opinion.

Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN, Appellee,

v.

THE DETROIT UNITED RAILWAY, Appellant.

Before the Full Bench.

STONE, J.:

A rehearing having been granted in these cases, they have been re-argued and reconsidered. The sole question here involved, as we view it, is the construction to be placed upon an ordinance granted the Detroit City Railway in 1889. Subdivision D. of section 3 of such ordinance reads as follows:

"Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of five-thirty o'clock and seven o'clock in the morning, and between the hours of five-fifteen o'clock and six-fifteen o'clock in the afternoon, over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through-carriage provided for in paragraphs 'A', 'B' and 'C' of this section."

The ordinance was duly accepted.

It is conceded that the Detroit United Railway has become the successor and assignee of the Detroit City Railway Company, by purchase. This being so, we think it accepted the benefits of the franchise granted, as well as assumed the obligations imposed upon it.

Does the ordinance relative to workingmen's tickets, have application to that territory now a part of the city, but without its
78 confines at the time the ordinance was granted?

A further investigation of the question involved, satisfies us of the correctness of the reasoning and conclusion of Chief Justice Montgomery who wrote the former opinion in these cases, to which opinion reference is here made.

He cited and followed the case of *Indiana Railway Co. v. Hoffman*, 69 N. E. 399, decided by the Supreme Court of Indiana. That case is well reasoned, and is supported by the authorities therein cited, and we think it should be followed in these cases. It may be asserted as a general proposition, applicable here, that a municipal law or ordinance designed for a city at large, operates throughout its actual boundaries, whatever they are, and is not affected by the fact that these are enlarged from time to time.

The following authorities support the proposition that a municipal ordinance, regulation, or contract, designed for a city at large, operates throughout its boundaries whatever their change.

McQuillin Municipal Ordinances, sec. 218;

Dillon Municipal Corporations, (4 ed.) sec. 185;

Citing *St. Louis Gas Co. v. St. Louis*, 46 Mo. 121;

Toledo v. Edens, 59 Iowa, 352, 13 N. W. 313;

In *St. Louis Gas Co. v. St. Louis*, above cited, which involved the amount due the company for gas furnished the city in its enlarged boundaries, the court said:

"The additional orders for lamps were all to be within the city, and the city is a unit, though with changing boundaries. There might be a question as to the extension of the exclusive rights of the plaintiff, for grants of monopolies are to be strictly construed; but there is no doubt that a city ordinance, or a city contract, designated for the city at large, operates throughout its boundaries whatever their change."

In *Toledo v. Edens* it is said:

"If an ordinance be enacted and afterwards the city limits be extended by adding thereto adjacent territory, no one would contend that a new ordinance must be passed in order to be operative in the newly-acquired territory."

It is true that that case involved a police regulation, but the authorities cited seem to make no distinction between such a regulation and an ordinance or contract relating to traffic regulation.

We agree with Chief Justice Montgomery, that the cases presented do not involve an interference with any vested right of the company as assignee of the Fairview Railway, but resolves itself into a question of the construction of the ordinance.

The rule that the terms of the franchise must be construed strictly against the respondent, as held in *West Bloomfield Township v. Railway*, 146 Mich. 198, is applicable here.

We see no reason to recede from the former ruling in these cases, and the convictions are affirmed.

J. W. STONE.
CHAS. A. BLAIR.
AARON V. McALVAY.
FRANK A. HOOKER.
RUSSELL C. OSTRANDER.
JOSEPH B. MOORE.
FLAVIUS L. BROOKE.
JNO. E. BIRD.

Endorsed: Filed September 28th, 1910. Chas. C. Hopkins,
Clerk.

At a Session of the Supreme Court of the State of Michigan,
Held at the Supreme Court Room, in the Capitol, in the City
of Lansing, on the twenty-eighth day of September, in the year of
our Lord one thousand nine hundred and ten.

Present the Honorable

John E. Bird, Chief Justice.

Russell C. Ostrander.

Frank A. Hooker,

Joseph B. Moore,

Aaron V. McAlvay,

Flavius L. Brooke,

Charles A. Blair,

John W. Stone,

Associate Justices.

No. 22,727.

THE PEOPLE OF THE STATE OF MICHIGAN, Appellee,

vs.

DETROIT UNITED RAILWAY, Appellant.

The record and proceedings in this cause having been removed to this Court by Writ of Certiorari issued to the Recorder's Court of the City of Detroit, and the same and the matters and proceedings therein, having been seen and inspected and duly considered by the Court and no error appearing therein, Therefore it is ordered and adjudged by the Court that judgment of said Recorder's Court of the City of Detroit, be and the same is hereby in all things affirmed.

81 *Petition for Writ of Error to Supreme Court United States.*

STATE OF MICHIGAN:

In the Supreme Court,

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

THE DETROIT UNITED RAILWAY, Defendant and Appellant.

To Honorable John E. Bird, Chief Justice of the Supreme Court of Michigan.

The petition of the Detroit United Railway respectfully shows:

That it is defendant and appellant in the above entitled cause which was commenced in the Recorder's Court for the City of Detroit by the People of the State of Michigan against this defendant, in which court and cause a judgment was rendered against your petitioner; that cause was removed to this Court by a writ of certiorari where said judgment of the said Recorder's Court of the City of Detroit was affirmed; that there were presented to said Recorder's Court of the City of Detroit and to this Court certain federal questions which were decided adversely to your petitioner as follows:

1st. That so far as the act annexing the territory embraced within the limits of the village of Fairview or part thereof purports to make

operative any ordinance of the City of Detroit requiring the defendant to sell or accept the so-called workingmen's tickets on the cars of the defendant within the territory so annexed, said act impairs the obligation of the contract embodied in the said grant by the village of Fairview to this defendant, and its acceptance by this defendant in violation of section 10 of Article 1 of the Constitution of the United states, and section 43 of Article 4 of the Constitution of

82 this state, and deprives the defendant of its property without due process of law in violation of the 14th amendment of the Constitution of the United States.

2nd. That the act annexing the territory within the Village of Fairview to the city should be so construed as not to impair the obligation of the contract in relation to the rate of fare between the Village of Fairview and the defendant.

The defendant herein claims the benefit of the provisions of Article 1 section 10 of the Constitution of the United States, and section 43 of Article 4 of the Constitution of this state in respect to said contract.

3rd. That the effect given by the decision of the Supreme Court of the state of Michigan to a statute of the State of Michigan annexing certain territory to the City of Detroit impairs the obligation of previous contracts and each of them made between the predecessors in title of your petitioner and the townships of Hamtramck and Grosse Pointe and the Villages of Fairview and Grosse Pointe, respecting rates of fare to be charged for transportation of passengers under said several contracts which have been duly assigned to your petitioner, in that said decision requires a lower rate of fare than is provided in said several contracts.

4th. The record shows that under authority conferred by the street railway law of Michigan contracts were entered into between the townships of Grosse Pointe and Hamtramck and the villages of Fairview and Grosse Pointe with the predecessors in title of your petitioners, under which said predecessors were authorized to operate a street railway within the limits of and through said municipalities, said contracts being Exhibits A, B, & C on record, and by said contracts with the township of Grosse Pointe and said Village of Fairview and the predecessors in title of said petitioner, the company operating said line of railway was entitled to charge a rate of fare of

83 five cents a passenger for a ride of any distance over any portion of said railway within said township and village; that the grantees named in said contracts constructed and had in operation said line of railway; that thereafter your petitioner acquired the same and all said contract rights under the authority of section 15 of said street railway law, together with the rights, privileges and franchises thereof and the right to use, maintain and operate said railways and to enjoy the rights, privileges and franchises thereof in the same manner and upon the same terms as the company from which it acquired it; that your petitioner entered upon the ownership and operation of said railway; that by virtue of the provisions of said section 15 the rights possessed by petitioner's prede-

cessor in title passed to and inured to the benefit of your petitioner; that thereafter the legislature of Michigan by statute annexed a portion of the territory in which said railroad was constructed and operated to the City of Detroit, so that the same became a part of said City of Detroit, and because of such annexation it was alleged and claimed by the said City of Detroit that a rate of fare less in amount than that which had theretofore prevailed upon the lines of railway of petitioner should prevail upon the lines of railway constructed and in operation under the several township grants during certain hours of the day, at which time a rate of fare of eight tickets for twenty-five cents, it was alleged, was all that petitioner was entitled to charge; and the Supreme Court of the State of Michigan held and gave to said act of annexation the effect of requiring petitioner to carry passengers within said annexed territory over the said line of railway for a lower rate of fare. Therefore petitioner alleges that the said decision and judgment of the said Supreme Court is erroneous in that under the effect given to the said act of annexation by its interpretation and construction thereof, said act impairs the obligations of the several contracts and of each of them hereinabove referred to between the predecessors in title of petitioner and the said Villages of Grosse Pointe and Fairview and the said townships of Grosse Pointe and Hamtramck, and that it com-

84 pels your petitioner to accept for the transportation of passengers over the said line of railway a rate of fare much less than it had a right to receive for such transportation under the terms of said contracts thereby and in that manner impairing the obligation of the said several contracts in violation of section 10 Article 1 of the Constitution of the United States, and further because of the effect so given to the said act of annexation and the effect which said Supreme Court held that it had upon the rights, privileges and franchises of petitioner with reference to the said railways in the matter of rates of fare as hereinabove set forth, the said act of annexation did deprive your petitioner of its property without due process of law in violation of the 14th amendment of the Constitution of the United States.

Wherefore your petitioner prays for an order allowing the issue of a writ of error to remove said cause and the records therein to the Supreme Court of the United States for review and for a citation directed to the City of Detroit representing the people of the State of Michigan, admonishing it to appear at the Supreme Court of the United States pursuant to said writ of error.

DETROIT UNITED RAILWAY,
By JOHN C. DONNELLY,

Attorney for Defendant.

Oct. 5, 1910.

[Endorsed:] State of Michigan. Supreme Court. The People of the State of Michigan, vs. Detroit United Railway. Petition of Defendant & Appellant. Filed Oct. 7, 1910. Chas C. Hopkins, Clerk. John C. Donnelly & C. D. Joslyn, Attorneys for Defendant, Ford Bldg., Detroit, M.

85 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan.
Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Michigan before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of Michigan and The Detroit United Railway wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was

86 drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The Detroit United Railway as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable John M. Harlan, Acting Chief Justice of the United States, the twelfth day of October, in the year of our Lord one thousand nine hundred and ten.

[Seal of the U. S. Circuit Court, Eastern District of Mich.,
Southern Division.]

CHARLES L. FITCH,

*Clerk of the Circuit Court of the United
States, West. Dist., Mich.,*

By LEOLYN O. TENHOPEN,

Deputy.

Allowed by

JNO. E. BIRD,

*Chief Justice of the Supreme Court of
the State of Michigan.*

UNITED STATES OF AMERICA,

Supreme Court of Michigan, ss:

In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, together with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Michigan, in the City of Lansing, this 29th day of October, A. D. 1910.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,

Clerk Supreme Court of Michigan.

87 UNITED STATES OF AMERICA, ss:

To The People of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of Michigan wherein The Detroit United Railway is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John E. Bird, Chief Associate Justice of the Supreme Court of the State of Michigan, this seventh day of October, in the year of our Lord one thousand nine hundred and ten.

[Seal of the Supreme Court of Michigan, Lansing.]

JNO. E. BIRD,

*Associate Justice of the Supreme
Court of the United States.*

I hereby accept service of the foregoing citation.

P. J. M. HALLY,

Att'y for Def't in Error.

88

Copy of Bond.

Know all men by these presents, That we, Detroit United Railway, a corporation organized under the laws of Michigan, as principal, and The Fidelity & Deposit Company of Maryland, A corporation under the laws of Maryland, as sureties, are held and firmly bound unto The People of the State of Michigan in the full and just sum of five hundred dollars, to be paid to the said The People of the State of Michigan, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind our-

selves, our heirs, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 12th day of October, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Lansing in the Supreme Court of the State of Michigan in a suit depending in said Court, between The People of the State of Michigan, Defendant in Certiorari, and against the Detroit United Railway, Respondent and plaintiff in certiorari, a judgment was rendered against the said Detroit United Railway and the said Detroit United Railway having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said The People of the State of Michigan citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Detroit United Railway shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

DETROIT UNITED RAILWAY,
By A. E. PETERS, *Ass't. Sec'y*;
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By CHARLES WHITAKER, *Attorney in Fact*.

[Seal Fidelity & Deposit Co.]

Attest:

W. H. WHITAKER, *Agent*.

Sealed and delivered in the presence of—

— — —
— — —
— — —

Approved by—

JNO. E. BIRD,
*Chief Justice of the Supreme
Court of the State of Michigan.*

(Endorsed:) Filed Oct. 15, 1910. Chas. C. Hopkins, Clerk Supreme Court.

No. —.

DETROIT UNITED RAILWAY, Plaintiff in Error,
vs.
PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

And now comes the said plaintiff in error and files the following assignments of error in the decree finding the record and proceedings of the Supreme Court of the State of Michigan in the above entitled cause.

(1) That so far as the act annexing the territory embraced within the limits of the village of Fairview or part thereof purports to make operative any ordinance of the City of Detroit requiring the defendant to sell or accept the so-called workingman's tickets on the cars of the defendant within the territory so annexed, said act impairs the obligation of the contract embodied in the said grant by the village of Fairview to this defendant, and its acceptance by this defendant in violation of section 10 of Article 1 of the Constitution of the United States, and section 43 of Article 4 of the Constitution of this State, and deprives the defendant of its property without due process of law in violation of the 14th amendment of the Constitution of the United States.

(2) That the act annexing the territory within the village of Fairview to the city should be so construed as not to impair the obligation of the contract in relation to the rate of fare between the Village of Fairview and the defendant.

90 The defendant herein claims the benefit of the provisions of Article 1 section 10 of the Constitution of the United States, and section 43 of Article 4 of the Constitution of this state in respect to said contract.

(3) The said State Supreme Court erred in holding and finding that the act of the Legislature of the State of Michigan approved the — day of —, 19—, annexing certain territory in the Township of Grosse Pointe and the Village of Fairview to the City of Detroit, had the effect to deprive said plaintiff in error of the right and franchise which it had theretofore possessed to charge a rate of fare of five cents per passenger for a ride over any distance of the territory so annexed to the City of Detroit under the grants made to its predecessor by said Township of Grosse Pointe and Village of Fairview and the Township of Hamtramck, as set forth in the record in said cause, and in holding and deciding that such act of annexation, given the effect aforesaid, did not contravene Section 10, Article 1, of the Constitution of the United States with reference to the impairment of contracts, and that, given such effect, said act did not impair the obligation of contracts contained in the grants aforesaid, by which the said plaintiff in error was entitled to charge a rate of fare of five cents within the territory annexed, as appears by the record in the said State Supreme Court.

(4) Said State Supreme Court erred in holding and deciding that the act of annexation referred to in the first above assignment of error had the effect of depriving said plaintiff in error of the right to charge a five cent rate of fare within the limits of the territory annexed by said act to the City of Detroit under the terms of the grants to the predecessor in title of said plaintiff in error, as set forth in the record in this cause, from the Township of Grosse Pointe and the Village of Fairview and the Township of Hamtramck, 90½ and in giving to said act of annexation that effect said Court erred in holding that the same did not deprive said plaintiff in error of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

(5) Said Court erred in holding and deciding that, by force of the act of annexation by which certain of the territory within the limits of the Township of Grosse Pointe and the Village of Fairview was annexed to the City of Detroit, a rate of fare of eight tickets for twenty-five cents during certain hours of the day, as appears by the record in this cause, was substituted for the rate of fare fixed by the said grants and contracts entered into between the Township of Grosse Pointe and Village of Fairview and the Township of Hamtramck and the predecessor in title of the said plaintiff in error, and that by reason thereof the said plaintiff in error was not entitled to charge the rate of fare fixed by the said several grants and contracts, but was only entitled to charge the reduced rate of fare above mentioned, thereby giving to said act the effect of impairing the obligation of said contracts, and thus impairing the obligation of said contracts sustaining the validity thereof in contravention of Section 10, Article 1, of the Constitution of the United States, and in depriving said plaintiff in error of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

(6) Said State Supreme Court erred in affirming the judgment of the Recorder's Court of the City of Detroit in said cause, and in sustaining the conviction and the imposition of the fine by said Recorder's Court.

(7) Said State Supreme Court erred in holding and deciding that, under the terms of a certain ordinance contract entered into between the predecessor in title of the plaintiff in error and 91 the City of Detroit, it was not entitled to charge the rate of fare fixed by the several ordinances contracts and granted between the Township of Groose Pointe and theh Village of Fairview and the Township of Hamtramck and the predecessor in title of said plain in error in its ownership of the several railroads constructed on the several township and village ordinance contracts and grants, and was only entitled to charge the reduced rate of fare of eight tickets for twenty-five cents during certain hours of the day, as set forth in the record in said cause, because by force of the effect of the annexation by the Legislature of the State of Michigan of certain of the territory formerly included within said village and Townships, the rate of fare fixed by the said contracts or ordinances was extended to

said annexed territory, notwithstanding that the contracts between said village and township provided for a higher and different rate of fare in said annexed territory, thereby impairing the obligation of said several village and township grants and contracts, and in violation of Section 10, article 1, of the Constitution of the United States, and thereby also depriving said plaintiff in error of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Therefore said plaintiff in error prays that the judgment and decision of the said Supreme Court of the State of Michigan may be reversed and that the said State Supreme Court may be directed to enter an order reversing the judgment of the Recorder's Court of the City of Detroit in said cause.

JNO. C. DONNELLY,
C. D. JOSLYN,
Counsel for Pl'ff in Error.

[Endorsed:] Supreme Court of United States. Detroit United Railway vs. People of the State of Mich. Assignments of Error. Jon. C. Donnelly, C. D. Joslyn, Attorneys for Pl't'ff in Error, 1429 Ford Building, Detroit, Michigan.

92 Supreme Court of the State of Michigan.

THE DETROIT UNITED RAILWAY, Plaintiff in Error,
vs.

THE PEOPLE OF THE STATE OF MICHIGAN, Defendant in Error.

STATE OF MICHIGAN,
In the Supreme Court, ss:

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and determined in the above entitled cause by said Supreme Court, including the written decision and reasons therefor, signed by the judges of said Court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof; that attached thereto are the petition for writ of error, the writ of error with allowance endorsed thereon, the citation with acceptance of service endorsed thereon, by the attorney for the adverse party, a copy of the bond duly approved, together with the Assignments of Error in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Supreme Court at the City of Lansing this twenty-ninth day of October in the year of our Lord one thousand nine hundred and ten.

[Seal of Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

BLUEPRINT

TOO

LARGE

FOR

FILMING

93 UNITED STATES OF AMERICA:.

United States Supreme Court.

No. 22377.

DETROIT UNITED RAILWAY, Plaintiff in Error,

vs.

PEOPLE OF THE STATE OF MICHIGAN, Defendants in Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties in the above entitled cause that the plat or blue-print attached hereto may be considered part of the record in said cause, and that copies of said plat or blue-print may be attached to the printed record when the same is compiled by the clerk of said court.

Dated: Detroit, Michigan, June 10, 1912.

JOHN C. DONNELLY,

Attorneys for Plaintiff in Error.

P. J. M. HALLY,

Attorneys for Defendants in Error.

(Here follows blue-print marked p. 94.)

95 [Endorsed:] File No. 22,377. Supreme Court of U. S., October Term, 1912. Term No. 161. The Detroit Railway, Plff in Error, vs. The People of the State of Michigan. Stipulation of Counsel and addition to record. Filed July 11, 1912.

Endorsed on cover: File No. 22,377. Michigan Supreme Court. Term No. 161. The Detroit United Railway, plaintiff in error, vs. The People of the State of Michigan. Filed November 2d, 1910. File No. 22,377.

(23,496)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 921.

THE DETROIT UNITED RAILWAY, PLAINTIFF
IN ERROR,

vs.

THE CITY OF DETROIT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

INDEX.

	Page
Record from circuit court of Wayne county.....	1
Petition for writ of mandamus.....	1
Exhibit A—Grand River ordinance, May 1, 1868.....	9
B—Grand River ordinance, January 3, 1889.....	17
C—Resolutions of October 26, 1909.....	20
Answer.....	22
Exhibit 1—Greenfield grant, November 1, 1897.....	38
2—Detroit City Railway grant, November 22, 1862.....	42
3—Detroit City Railway grant, January 3, 1889.....	58
4—Resolutions of October 26, 1909.....	65
5—Hutchins letter, November 13, 1909.....	69
6—Hamtramck grant, August 12, 1873.....	71
7—Hamtramck grant, April 14, 1891.....	75
8—Grosse Pointe Village grant, March 13, 1891.....	78
9—Grosse Pointe Township grant, April 8, 1891.....	87
10—Fairview Village grant, May 16, 1905.....	91
Opinion of Judge Hosmer.....	95
Order granting mandamus.....	106

	Page
Petition for writ of certiorari.....	107
Calendar entries in court below	111
Blue print map of United lines.....	112
Argument and submission	113
Opinion	113
Judgment	122
Petition for writ of error.....	122
Citation and service	126
Bond on writ of error	127
Assignment of errors	128
Writ of error.....	132
Clerk's certificate	133

STATE OF MICHIGAN

THE CIRCUIT COURT FOR THE COUNTY OF WAYNE.

CITY OF DETROIT,

Relator,

vs.

DETROIT UNITED RAILWAY,
Respondent.

PETITION FOR MANDAMUS.

To the Honorable, the Circuit Court

For the County of Wayne:

The petition of the City of Detroit respectfully shows unto the court:

I. That it is a municipal corporation organized and existing under the laws of the State of Michigan.

II. That by virtue of authority vested in your petitioner under the provisions of the tram railway laws, being Chapter 168 of the Compiled Laws of 1897, it granted to the Grand River Street Railway Company in the year 1869 a franchise to operate and maintain lines of street railway upon Grand River avenue and other streets within the corporate limits of the City of Detroit, under the terms and conditions of an ordinance attached hereto and marked Exhibit "A."

III. That such ordinance contained the following language with regard to the grant of the line upon Grand River avenue, "on and through said Grand River avenue to a point of intersection with the tracks of the Michigan Southern and the Detroit, Monroe & Toledo Railways."

IV. That by the act of February 12, 1857, the city limits upon Grand River avenue were established at the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo Railways.

V. That in pursuance of the power above mentioned the City of Detroit, by ordinance of August 3, 1888, granted the Grand River Street Railway Company the right, subject to the terms of the grant of 1868, to operate a line of cars "on and through the center of Grand River avenue from the present terminus of its tracks on said avenue to the westerly city limits."

VI. That by the act of May 3, 1875, the city limits were extended on Grand River avenue to the intersection of McGraw avenue, and again by an act of May 26, 1885, the limits were extended to a point just beyond the Boulevard.

VII. That subsequent to the granting of such original franchises, to-wit: on January 3, 1889, the Common Council granted and the Grand River Railway Company accepted an ordinance attached hereto and marked Exhibit "B," which ordinance granted the company several valuable concessions in return for which, and in consideration of the permission granted, the company agreed to carry passengers upon its Grand River line and other lines for a continuous trip from any point upon the line of said railway to any other point on the line of said railway for a single fare of five (5) cents for one continuous trip; also agreeing to issue and sell tickets at the rate of eight (8) tickets for twenty-five (25) cents, to be good for transportation over the entire route of said company or any part thereof traveled continuously either way when offered for fare by persons taking passage on the cars within prescribed hours in the morning and afternoon, said ordinance being attached hereto and marked Exhibit "B."

VIII. That at the time of the granting of the ordinance of January 3, 1889, the northwesterly city limits on Grand River avenue were at a point immediately northwest of the intersection of the Boulevard and Grand River avenue.

IX. That the township of Greenfield granted by resolution to the Northwestern Railway Company the right to operate street railways through said township to the city limits, which were at the time of the original grant located just beyond the Boulevard as established by the Act of 1885.

X. That by the act of June 16, 1905, the limits were extended to a point 1100 feet further out Grand River avenue, and again by act of June 19, 1907, the limits were further extended to a point 1810 feet further out Grand River avenue from the Boulevard, making a total distance between the limits established in 1885 and those established by act of 1907, of 2910 feet. The territory lying within the city limits and beyond the Boulevard has become a thickly populated residential district, the growth of which has been retarded by its residents being compelled to pay a double fare, one fare to the Boulevard and another from the Boulevard to the city limits.

XI. That the cars on this part of the Grand River avenue line are operated as one route from the easterly city limits on Jefferson avenue to the northwesterly city limits upon Grand River avenue; that the cars operated upon the tracks by virtue of the franchise granted by the township of Greenfield, continue upon Grand River avenue over the tracks maintained by virtue of the ordinances of 1868, 1885 and 1889, and are in every other respect the same as the Grand River avenue cars except as to the rate of fare charged.

XII. That the Grand River Street Railway Company

conveyed its rights to the Grand River Railway Company, which in turn conveyed its rights to the Detroit Citizens' Street Railway Company, which last named company also operated in the City of Detroit other street car lines, among which was a line upon Jefferson avenue from Woodward avenue to the easterly city limits, which company sold all its rights, title and interest to the respondent, the Detroit United Railway; the Detroit United Railway Company by mesne conveyances became the successor and assignee of the Northwestern Railway Company, so that the Detroit United Railway, the respondent herein, continues to operate as one line, one route, one system, the cars operated upon Jefferson avenue, upon Grand River avenue and the northwesterly city limits to the easterly city limits on Jefferson avenue.

XIII. Your petitioner further represents that by ordinance of November 24, 1862, the Common Council of the City of Detroit by virtue of power reposed in it granted to the Detroit City Railway Company the authority to operate and maintain a line of cars on and through Jefferson avenue from Woodward avenue to the easterly city limits.

XIV. That by act of the Legislature of February 12, 1857, the easterly limits of the City of Detroit on Jefferson avenue were located at the intersection of Mt. Elliott avenue; that by ordinance of July 8, 1873, permission was granted to the Detroit City Railway Company to construct a double track on and throughout Jefferson avenue; the city limits still remained at Mt. Elliott avenue.

XV. That by ordinance of January 3, 1889, certain valuable concessions were granted to the Detroit City Railway Company on the part of the City of Detroit in return for which and in consideration for which the Detroit City Railway Company entered into a subsequent

agreement by ordinance, the terms of which were contrary and separate and apart from the rates of fare established in the original ordinance of 1862; among the concessions granted by the Detroit City Railway Company were that the company shall carry all passengers as shall have taken passage on the cars between certain hours in the morning and evening over any of its lines in said city for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip. The rate of fare established in the ordinance of 1862 for any distance in any one car or on any one route named in the ordinance should not exceed five cents.

XV-a. That by resolution of the Common Council adopted October 26, 1909, the grant to operate cars upon Jefferson avenue easterly to Baldwin avenue, where said grant of 1862 and 1879 as amended had expired, was continued from day to day under the same terms and conditions as the original grants, and cars are operated on said avenue by virtue of said resolution, a copy of said resolution being attached hereto and marked Exhibit "C."

XVI. That by act of the Legislature of May 26, 1885, the easterly city limits on Jefferson avenue were extended from Mt. Elliott avenue to Baldwin avenue, and from Baldwin avenue to Hurlbut avenue by an act approved May 13, 1891; that by an act of May 1, 1907, the easterly city limits on Jefferson avenue were extended from Hurlbut avenue to a point east of the Alter road in the old Village of Fairview.

XVII. That neither at the time of the enlargement of the corporate limits of the City of Detroit nor at any time since in the various enlargements of said territory as embodied in the acts above mentioned, with the exception of the act of 1907 on Jefferson avenue and the act of

1907 on Grand River avenue, has the Detroit United Railway, the respondent herein, or any of its predecessors, contested the right of passengers taking passage on their cars within the city limits to travel to the extreme city limits for one fare, and never before has the said company or its predecessors exacted a double fare for a continuous ride within the city limits; that in all of its acts in relation to the enlargement of the boundaries of the city it has construed the language "city limits" to mean such limits as the Legislature might from time to time enlarge, and to now exact a double fare from passengers for a continuous ride within the city limits is contrary to their own construction of these contracts, and that it is likewise contrary to the construction placed upon these contracts by the City of Detroit; that it is an arbitrary and capricious act on behalf of the respondent herein and contrary to the rights and equities of the people of the City of Detroit, an act injurious to the industrial growth of the city and an obstruction in the way of the future prosperity of the city and directly contrary to the purposes and benefits contemplated by the Legislature by their enlargement of the boundaries.

XVIII. That grants to operate cars on Jefferson avenue east of Baldwin avenue were granted to the Hamtramck Street Railway Company which company assigned its franchise together with all its rights, privileges and obligations to the Detroit City Railway on November 1, 1881, this being four years previous to the extension of the limits to Baldwin avenue by the Legislature; no extension was then made or double fare exacted by the Detroit City Railway Company.

XIX. That the township of Hamtramck granted Hendrie et al. on April 14, 1891, the right to operate cars upon Jefferson avenue from the then easterly city limits to a point in Grosse Pointe.

XX. That said grant was assigned by Hendrie et al. to the Jefferson Avenue Railway; by the Jefferson Avenue Railway to the Detroit Suburban Railway, which last named company assigned all its rights to the Detroit United Railway the respondent herein, so that the Detroit United Railway now operates cars upon Jefferson avenue from the Country Club westerly on Jefferson avenue, thence northwesterly on Grand River avenue to the northwesterly city limits on Grand River avenue; that at both ends of this line as now operated a double five-cent fare is exacted contrary to the previous interpretation of such contracts by the respondent and its predecessors.

XXI. That the respondent herein, the Detroit United Railway, contrary to the provisions of the ordinance herein mentioned and set forth, exacts and demands of passengers taking passage upon its cars upon Jefferson avenue east of St. Jean avenue within the city limits an extra fare for each passenger, and that the said respondent exacts and demands a five-cent fare and refuses to issue, sell and accept "workingmen's tickets" upon that part of its line operating upon Grand River avenue lying northwesterly of the Boulevard and within the city limits, and though demand has been made on behalf of the City of Detroit that said respondent place in effect in this territory the same rate of fare as is applicable to the rest of the City of Detroit it has arbitrarily and capriciously against the rights of your petitioner, contrary to the equities of the case and to the great injury and detriment of the people of the City of Detroit and to the growth of the city itself, refused so to do.

Your petitioner therefore prays that it may have a Writ of Mandamus issued out of and under the seal of this court, directed to the said Detroit United Railway, requiring said Detroit United Railway to comply with

the terms of said contract of January 3, 1889, to-wit: To issue and sell tickets at the rate of eight (8) tickets for twenty-five (25) cents, said tickets to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way, when offered for fare by persons taking passage on the cars between the hours of 5:30 o'clock and 7:00 o'clock in the morning and between the hours of 5:15 and 6:15 o'clock in the afternoon; and that the said Detroit United Railway be directed to carry passengers taking passage within the territory upon Grand River avenue from the Boulevard to the northwesterly city limits, and upon Jefferson avenue from St. Jean avenue to the easterly city limits, to any point on its lines in said city for a single fare of five cents; and that your petitioner may have such other and further relief in the premises as the nature of the case requires; that an order be issued, directed to said Detroit United Railway, on a day certain to show cause why a Writ of Mandamus should not issue as herein prayed.

And your petitioner will ever pray, etc.,

THE CITY OF DETROIT,
BY BERNARD F. WEADOCK,
Attorney for Petitioner.

RICHARD I. LAWSON,
Of Counsel.

EXHIBIT A.

GRAND RIVER STREET RAILWAY COMPANY.

(Approved May 1, 1868.)

Whereas, Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King and James P. Mansfield, their associates, successors and assigns, propose to organize as a body politic and corporate, under a charter from the Legislature of Michigan, or under the "Act to provide for the construction of Train Railways, approved February 13, 1855 (Laws of 1855, p. 338), for the purpose of constructing and operating in and through the streets of the City of Detroit; therefore,

Be it ordained by the Common Council of the City of Detroit:

Section 1. That consent, permission and authority is hereby given, granted and duly vested in the said Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, James P. Mansfield, their associates, successors and assigns organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turn-outs, side-tracks and switches, in and along the course of the streets and bridges in the City of Detroit hereinafter mentioned, and the same to keep, maintain and use and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance: Provided, That nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running into the City of Detroit.

Sec. 2. That said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, through said first named avenue to its intersection with Grand River avenue, and from thence on and through said Grand River avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo tracks, and also on and through any other street or streets running between the western terminus above specified, and Woodward avenue, to the Detroit River, as the Common Council shall by resolution designate: Provided, That the track from Fort street to Jefferson avenue shall be laid under the direction of the Committee on Streets and the City Engineer. (As amended June 26, 1871.)

Sec. 3. All railways built, constructed or maintained under the provisions of this ordinance shall be laid in the center of any and each street wherein the same are built, constructed or maintained (save upon Woodward avenue), if on a single track; and if on a double track the inside rail of each track shall be laid within two feet and four inches of the center of the street; the said rails shall be laid four feet eight inches apart so as to accommodate the most common width of carriage wheels. Provided, nevertheless, That in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the Common Council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may at any time thereafter, within five years, build a second track; so that they do not interrupt the running of their cars on the first completed track:

Provided, The consent of the Common Council is first obtained.

Sec. 4. The track of said railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to re-lay said rails, with necessary ties and stringers, the same shall be done at the expense of the grantees, and in all streets and parts of streets which are not paved the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the City Engineer. The grantees, or their assigns, shall be required to keep the surface of the streets inside of the rails in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portions of the streets at the expense of the grantees, and in such manner as not to obstruct travel in any part of the street.

Sec. 5. Consent, permission and authority is hereby further given, granted and vested to the Grand River Street Railway Company to lay and construct an additional track along Woodward avenue from Grand River avenue to the north line of Fort street, so as to form and complete a double track between said points. Such additional track to be laid under the supervision and direction of the Board of Public Works, and subject to all the conditions and provisions of the ordinance governing and controlling said railway: Provided, However, That such authority and permission and all rights therein may be revoked and withdrawn by the Common Council of said city, should any transfer, assignment or consolidation of

said railway company be made or affected with any other railway company or corporation. The cars to be used on said railway shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run at intervals not exceeding one regular car every five minutes during twelve hours each day, from Lincoln avenue to Jefferson avenue, and up to eleven o'clock at night. The cars and carriages used by said grantees shall be of the best style used on street railways in said city, and shall be used for no other purpose than to transport passengers and their ordinary baggage: Provided, That other cars and carriages may be used for cleaning said railway tracks from obstructions by snow and otherwise. (As amended March 3, 1883.)

Sec. 6. The rate of fare for any distance shall not exceed five cents in any one car or any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, Cars so chartered shall not be considered regular cars within the meaning of the preceding section.

Sec. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in case of accident or at stations, or for the purpose of connecting two cars together.

Sec. 8. The said grantees shall complete their railway from Woodward avenue through Grand River street, to the easterly line in the Woodbridge farm, contemporaneously with the paving of said street to said easterly line of the Woodbridge farm; said road thence from the easterly line of the Woodbridge farm to be completed to the western limits of the city as soon as the public necessity requires it, and the Common Council shall be the judges of such necessity; and shall also complete their road on any street designated by the Common Council, from

Grand River street to the Detroit River, or to Jefferson avenue, within three months after such designation shall be made by said Council.

Sec. 9. No car shall be allowed to stop at a cross-walk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

Sec. 10. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

Sec. 11. The grantees or their assigns shall employ careful, sober and prudent agents, conductors and drivers to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

Sec. 12. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

Sec. 13. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

Sec. 14. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed and the drivers of any vehicles refusing to do so shall be liable to a fine not exceeding five dollars, on conviction before the Recorder's Court of said City of Detroit, and costs of prosecution shall not be at the expense of the city.

Sec. 15. The cars, after sunset, shall be provided with signal lights—blue in front and green in rear of the cars.

Sec. 16. Wherever gas or water pipes and sewers are now laid in the streets herein specified, and through which railways are to pass, the said railway must be laid down and maintained subject to the rights now in the city and the Gas Company and Board of Public Works to take up and remove said pipes or sewers in such a manner as not unnecessarily to damage or injure said railways, or their use, without claim against said city, Gas Company or the Board of Public Works; and the Common Council expressly reserves to itself the right hereafter to lay down or to permit to be laid down and repaired in said streets, gas or water pipes and sewers, whenever the public or private conveniences may require; the said Gas or Water Companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the street to its former condition.

Sec. 17. If said grantees or other assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, or by resolution of the Common Council, then the rights and privileges granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof: Provided, The Council does not extend the time: Provided, That if said grantees shall be delayed by the order or injunction of any court: Provided, Said injunction is not obtained by connivance of said grantees: And further provided, That if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

Sec. 18. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railways.

Sec. 19. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

Sec. 20. This ordinance shall be void and of no effect unless the grantees shall, within one month from the date of the passage thereof, notify the Common Council in writing of their acceptance of and agreement to the provisions of this ordinance, and shall, within six months after said last date, commence the work of building and constructing said railway from Woodward avenue to the east line of Woodbridge farm.

Sec. 21. It is distinctly provided, understood and agreed that the rights, franchises or privileges hereby conferred upon the grantees are subject to the rights now vested in the Detroit City Railway Company.

Sec. 22. On and after the date upon which this ordinance shall take effect, whenever any of the streets or avenues through which the line of said railway is or may be laid shall be ordered to be paved, repaved or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the streets and avenues which lies between the outer rails of their track, including the space between all double tracks and switches, and said company shall at all times keep the same clean and in good order and condition; but said company shall have the right, for the purpose of paving, repaving or repairing said spaces, to use either cedar

blocks or cobble stone, or some similar durable and proper material, to be approved by the Common Council. (As amended June 12, 1882.)

Sec. 23. The said grantees and their assigns shall pay to the Treasurer of the City of Detroit, annually, after five years from the passage of this ordinance, fifteen dollars on each and every passenger car, to be collected as a license for the use of the city, after the term of five years from and after this date.

Sec. 24. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the Legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the Common Council whatever.

EXHIBIT B.

CRAWFORD STREET AND EAST CONGRESS
STREET LINES—DOUBLE TRACK ON
GRAND RIVER AVENUE.
(Approved January 3, 1889.)

Section 1. Subject to all the provisions, regulations and requirements of Chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Railway Company to construct, operate and maintain a double track street railway in, along and through Grand River avenue, so-called, in the City of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turn tables and cross-overs; also to construct, operate and maintain a single street railway track in, along and through Crawford street, in the said City of Detroit, commencing at a point on the track of said Grand River Street Railway Company, and running thence northerly along the center of said Crawford street to the Detroit & Bay City Railroad crossing, together with all suitable and necessary turnouts, turn-tables, curves and switches; also to construct, operate and maintain a single track railway in, along and through Congress street east in said City of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence easterly along said Congress street east to the easterly limits of the City of Detroit, or so far as said Congress street may be opened, and until said Congress street east shall be opened to the city limits or one year thereafter, as hereinafter provided, the said Grand River Street Railway Company—the permission of the Detroit City Railway having first been obtained for such action—shall

connect its track at the corner of Mt. Elliott and Congress streets east with that of the Detroit City Railway and run its cars over said tracks of said Detroit City Railway along Mt. Elliott and Jefferson avenue east of Mt. Elliott to the Boulevard thence to a point at a convenient distance from the Belle Isle Park Bridge to be fixed by the Board of Public Works.

Sec. 2. Said double track on said Grand River avenue shall be laid so that the outer rails of said track shall be equi-distant from a line drawn along the center of said street, and in addition to the paving required to be done by the said Grand River Street Railway Company, under its present ordinance, it shall lay and maintain the pavement between the double tracks hereby authorized.

Sec. 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration of the permission hereby granted the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east, or to the terminus thereof for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets; also, for a continuous trip from any point on the line of said railway to any other point on the lines of said railway, for a single fare of five cents for one continuous trip; and shall also within sixty days

of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way when offered for fare by persons taking passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon.

Sec. 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance: Provided, however, That the railway track along and upon Congress street east, between Mt. Elliott avenue and the city limits, shall be laid, constructed and in use within one year after that portion of Congress street east shall be opened for public use: Provided, also, That the said Grand River Railway Company shall, within thirty days after the approval of this ordinance by the Mayor, file its acceptance thereof in writing, and shall give within the same period of time a bond in the penal sum of \$20,000 for the faithful performance by it of the terms and conditions of this ordinance.

Sec. 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

Sec. 6. That said company is hereby authorized to run its cars at a rate of speed not exceeding ten miles per hour, and is hereby required to run them at an average speed of not less than six miles per hour, and is also permitted to use in operating its cars electricity or any other proper or suitable motive power used by any other street railway company now or hereafter organized and operated in the City of Detroit.

EXHIBIT C.

Whereas, The franchise right of the Detroit United Railway, as the successor in title, to operate a street railway line on Twenty-fourth street from Baker street to Dix avenue, and on Dix avenue from Twenty-fourth street to Livernois avenue, either expired on April 17, 1906, or will have expired on November 14, 1909, and the city of Detroit has granted no franchise to operate cars on said streets after November 14, 1909; and

Whereas, The franchise right of the Detroit United Railway, as the successor in title, to operate a street railway line on the following streets and portions of streets will have expired on November 14, 1909, to-wit:

From a point 194 feet west of the west line of Fifth street to Concord avenue; from Field avenue to a point 200 feet east of Baldwin avenue.....
And the City of Detroit has granted no franchise right to operate cars on said streets or portions of streets after Nov. 14, 1909; and

Whereas, All of said streets and portions of streets would after Nov. 14, 1909, be subject to the terms and conditions of the Hally Ordinance, if the same is a valid enactment and is accepted by the Detroit United Railway; and

Whereas, No term franchise or agreement under the revised constitution can be valid or binding unless the franchise or agreement shall have first received the affirmative vote of three-fifths of the electors of the City; and

Whereas, Under the revised constitution every street railway company is denied the right to use the highways, streets, alleys or public places of any city without the consent of the duly constituted authorities of

such city, and is denied the right to transact a local business in the City without first obtaining a franchise therefor from such City. Therefore, be it

Resolved, That consent, permission and authority is hereby granted to the Detroit United Railway to continue from day to day after Nov. 14, 1909, to operate its cars upon the streets and portions of streets above set forth under the same terms and conditions, except as to percentages on gross receipts now prevailing in the City of Detroit, whether due to contract agreement or not, upon the payment weekly by the Detroit United Railway to the City Treasurer of the sum of three hundred dollars for each day that the streets and portions of streets above set forth are used by said company in the operation of its railway or railways; and be it further

Resolved, That this resolution is subject to revocation at any time at the will of the Common Council or of the people of the City of Detroit. Adopted.

ANSWER OF RESPONDENT.

STATE OF MICHIGAN—THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE.

THE CITY OF DETROIT,	} Re'ator,
vs.	
THE DETROIT UNITED RAILWAY,	
	Defendant.

The Detroit United Railway in response to the order to show cause, granted in this case, and in answer to the petition of the Relator, says:

1. This respondent admits that the city of Detroit is a municipal corporation organized and existing under the laws of Michigan.

2. This respondent denies the second paragraph of the petition of the relator and shows that the city of Detroit did not grant to the Grand River Street Railway Company any general authority to construct, maintain and operate street railways within the corporate limits of the city of Detroit, but it admits that by an ordinance approved May 1st, 1868, and under the authority conferred by the Tram Railway Act of 1855 the common council of the City of Detroit did grant to Nathaniel Prouty and others and their associates, consent, permission and authority to construct, maintain and operate a street railway on specifically designated portions of Grand River avenue and Woodward avenue in the City of Detroit.

3. This respondent admits that said ordinance of May 1, 1863, contained the language quoted in the third paragraph of the petition of the relator, with a proviso that there should not be more than two parallel street

railway tracks on Woodward avenue; that by an ordinance approved June 26, 1871, section 2 of the ordinance of May 1, 1868, was amended and a change made in the proviso, so that the whole section became and still remains as set forth in Exhibit A of relator's petition.

4. This respondent admits that the charter of the City of Detroit, approved February 12, 1857 (Laws 1857, p. 73) fixed the city limits on Grand River avenue in the vicinity of the railway tracks of the Michigan Southern, and the Detroit, Monroe & Toledo Railways.

5. This respondent admits that by an ordinance approved August 3, 1888, the Common Council of the City of Detroit, granted to the Grand River Street Railway Company, subject to the provisions of said ordinance of May 1, 1868, consent, permission and authority to construct, use and operate a single street railway track with suitable switches, turn-outs and turn tables on and through the center of Grand River avenue from the then present terminus of the track near said railroad crossing on said avenue to the then westerly city limits near the Boulevard.

6. This respondent admits that by an act approved May 3, 1875, the corporate limits of the City of Detroit were extended on Grand River avenue to the intersection of McGraw avenue, and again by an act approved May 26, 1885, the limits were extended to a point a short distance beyond the Boulevard.

7. This respondent admits that an ordinance approved January 3, 1889, was accepted by the Grand River Street Railway Company and a copy of said ordinance is annexed to the petition of the Relator as Exhibit B.

8. This respondent admits that at the time of the adoption and acceptance of said ordinance, January 3, 1889, the northwesterly city limits of the City of Detroit

on Grand River avenue were at a point a short distance immediately northwest of the intersection of the Boulevard with said Grand River avenue.

9. Answering paragraph nine of the petition of the Relator, this Respondent shows that upon the first day of November, 1897, when the northwesterly limits of the City of Detroit were a short distance beyond the Boulevard, the Township Board of the Township of Greenfield made a street railway grant to Seymour Brownell, James A. Randall and Hoyt Post, and to their successors and assigns to be organized as a corporation under the laws of Michigan of the exclusive right and privilege of constructing, maintaining and operating a street or tram railway with all necessary and convenient turn-outs, switches, single and double tracks, and all necessary appurtenances thereunto belonging for the term of thirty (30) years from the date of the acceptance of the grant, upon and along the Grand River road, so-called, from the west line of the Township of Greenfield, through the township to the then present city limits of the City of Detroit, a copy of said Township grant is annexed to this answer as Exhibit I. This respondent shows that Brownell, Randall and Post assigned said grant, Exhibit I, to the Grand River Electric Railway, which company assigned the same to the Detroit and Northwestern Railway, which company assigned the same to this respondent, The Detroit United Railway.

10. This respondent admits that by an Act approved June 16, 1905, the city limits were extended to a point eleven hundred (1100) feet further out Grand River avenue and by an Act approved June 19, 1907, they were still further extended eighteen hundred and ten (1810) feet, making a total extension beyond the Boulevard of twenty-nine hundred and ten (2910) feet. This respondent admits that the territory lying beyond the Boulevard

and the city limits as fixed by the Act of June 19, 1907, has largely increased in population as a residential district since the construction of the street railway under said Township grant and the enjoyment by the residents of said territory of the rates of fare fixed in said township grant. This respondent denies that the growth of population in said territory has been retarded because the residents are compelled to pay a double fare, one fare to or from the Boulevard and another fare to or from the Boulevard to the city limits, and it shows that the provisions of the Township grant providing for the sale to residents of the whole township of six (6) tickets for twenty-five (25) cents and of ten (10) school tickets for thirty (30) cents good from any point in the township to the old city limits at the Boulevard, is a greater advantage than anything that would be gained by having the city five cent fare zone extended from the Boulevard to the present city limits.

11. This respondent admits that the Grand River avenue line and the Jefferson avenue line of street cars are operated as one route from the easterly city limits on Jefferson avenue to the north westerly city limits on Grand River avenue; that prior to October 26, 1911, a five cent fare was collected between the old westerly city limits at the Boulevard on Grand River avenue and the old city limits on Jefferson avenue at the westerly line of the township of Grosse Pointe and the Village of Fairview, and that the fares beyond said old westerly and old easterly limits were collected under and in accordance with the township grant of the Township of Greenfield, and the grants of the township of Grosse Pointe and of the village of Grosse Pointe and of the village of Fairview, all hereinafter mentioned.

12. This respondent admits that the Grand River Street Railway Company which was organized under the

25

Tram Railway Act of 1855, to accept the grant of May 1, 1868, conveyed all its rights to the Grand River Railway Company which in turn conveyed its right to the Detroit Citizens Street Railway Company, and which last named company conveyed all its right, title and interest to this respondent, The Detroit United Railway, and that by these conveyances this respondent became possessed of the Grand River Street Railways, and also as is hereinbefore alleged of the railways of the Detroit & Northwestern Railway Company, and while these railroads are for convenience and economy operated together, this respondent has always insisted upon its contract rights under the grant made to Brownell, Post and Randall, which is now held by this respondent.

This respondent admits that since October 28, 1911, this respondent has accepted five cent fares and workmen's tickets (during the prescribed hours) for a ride between the new city limits and the city, and vice versa; but it shows that this is a mere temporary experiment and not in recognition of any obligation on its part so to do, and it reserved and still reserves the right to resume the collection of additional fares at the old city limits near the Boulevard whenever it desires to do so.

This respondent further shows, that passengers boarding the cars west of the new city limits and in the township of Greenfield are still permitted to ride for a single fare as far as the old city limits at the Boulevard, and passengers boarding the cars between the said old city and the new city limits are permitted to ride for a single fare into the township of Greenfield, west of the new city limits.

13. This respondent admits that the Detroit City Railway Company constructed and operated a street railway on Jefferson avenue in the City of Detroit under an ordinance of the City approved Nov. 24, 1862, and

the amendments thereto. A copy of said ordinance as amended is annexed to this answer as Exhibit 2. Added to said exhibit is an ordinance approved Nov. 14, 1879, extending the grant to the Detroit City Railway for thirty years from that date.

14. This respondent admits that the charter of the City of Detroit approved Feb. 12, 1857, fixed the easterly limits of the city on Jefferson avenue at Mt. Elliott avenue, and an ordinance approved July 8, 1873, authorized a double track on Jefferson avenue. (See Sec. 40 of Exhibit 2.)

At that time the easterly city limits remained at Mt. Elliott avenue, and the western terminus of Jefferson avenue was at its junction with Woodbridge street, near First and Second streets.

15. This respondent admits that an ordinance approved January 3, 1889, was accepted by the Detroit City Railway. A copy of said ordinance is annexed to this answer as Exhibit 3.

At that time the easterly limits of the City of Detroit had been extended to Baldwin avenue, and said ordinance authorized the extension of the double track on Jefferson avenue from Mt. Elliott avenue to Baldwin avenue.

15a. This respondent denies that its right to operate street cars on Jefferson avenue expired Nov. 14, 1909, or at any other time, but it admits that the common council adopted the preamble and resolutions of October 26, 1909, annexed to the petition of relator as Exhibit C thereof, and that without waiving any of its rights to remain on Jefferson avenue, without any new or additional consent by the city, this respondent has since paid to the city the per diem of \$300, mentioned in said resolutions.

Further answering paragraph 15a, this respondent says that a full copy of said preamble and resolutions of Oct. 26, 1909, is hereto annexed as Exhibit 4 of this answer, and the response thereto of this respondent by Mr. Jere C. Hutchins, its president, is hereto annexed as Exhibit 5.

That at the time said preamble and resolutions were passed by the common council and for a long time prior thereto, to the knowledge of said common council, this respondent was collecting the very fares complained of in this case; that after said acts of the legislature extending the city limits on Grand River avenue from the Boulevard 2910 feet into the township of Greenfield, this respondent continued until Oct. 28, 1911, to collect the fares fixed by the said township grant to Brownell, Randall and Post; that after the act of the legislature extending the city limits on Jefferson avenue from Hurlbut avenue into the village of Fairview this respondent continued (except as hereinafter stated) to collect the fares fixed by the grants made to this respondent by the township and the village of Grosse Pointe and by the village of Fairview, which are hereinafter set forth; and this respondent has never by an act or deed or by any practical construction, or in any way whatsoever waived or abandoned its right to collect the fares secured to it by said several township and village grants, and contracts.

16. This respondent admits that the easterly limits of the City of Detroit were extended by an act of the State Legislature, approved May 26, 1885, from Mt. Elliott avenue to Baldwin avenue and by an act approved May 13, 1891, from Baldwin avenue to Hurlbut avenue, and by an Act approved May 1, 1907, from Hurlbut avenue to a point east of and near the Alter road, in the then village of Fairview.

17. The seventeenth paragraph of the petition of the

relator and each and every allegation therein made is specifically and categorically denied.

18. This respondent admits that the township of Hamtramck Aug. 12, 1873, made a street railway grant to the Hamtramck Street Railway Company which assigned the grant to the Detroit City Railway, which was confirmed by the township Nov. 1, 1881. A copy of said grant and of the confirmation thereof is hereto annexed as Exhibit 6.

Said grant provided that a single fare of five cents from any point on Jefferson avenue in Detroit to any point on said line in the township, and no other fare could be charged under said grant.

19. This respondent admits that the township of Hamtramck, April 14, 1891, made a street railway grant to George Hendrie and others and their associates and assigns, and which grant by mesne conveyances became the property of this respondent. A copy of said grant is hereto annexed as Exhibit 7. Said grant provided for a five cent fare from any point on Jefferson avenue in Detroit to any point in the township and vice versa, and no other fare could be charged under said grant.

Further answering this respondent says, that the township of Grosse Pointe originally included all the territory lying between the east line of the township of Hamtramck (which became the east line of the City of Detroit) and the Macomb county line; that the central portion of said township on the Jefferson road became the incorporated village of Grosse Pointe, which was reincorporated in 1889 (Local Acts 1889, p. 863), with its westerly boundary at the Cadieux road; that in 1891 the said village of Grosse Pointe and the said township of Grosse Pointe each made a street railway grant to George Hendrie and others and their associates and assigns, and copies of said grants, and their respective

supplementary agreements are hereto annexed as Exhibits 8 and 9.

That the village of Fairview was incorporated in 1903, and its territorial limits included all that part of the township of Grosse Pointe lying between the then easterly boundary of the City of Detroit at Hurlbut avenue and the west line of the village of Grosse Pointe at the Cadioux road; that on the 6th day of December, 1904, the village of Fairview passed a resolution authorizing this respondent to erect car barns at the corner of Jefferson avenue and St. Jean road and make the necessary track connections, and on the 16th day of May, 1905, the village of Fairview passed and this respondent accepted a street railway grant, a copy of which is hereto annexed as Exhibit 10.

20. This respondent admits that it has acquired and operates street railways from the Country Club (which is in the village of Grosse Pointe) westerly on Jefferson avenue to Griswold street, northerly on Griswold street to Grand River avenue, and on Grand River avenue to the present city limits, but it shows that said railways were acquired and are held by it under the several grants hereinbefore set forth; and it is advised and submits that at each end of said street railway route this respondent has a contract right to collect the fares fixed by the several township and village grants aforesaid.

21. This respondent admits that it has exacted and demanded the fares mentioned in the 21st paragraph of the petition of relator, and it admits that it proposes to continue to collect and demand said fares.

22. Further answering, this respondent shows that the case of *People vs. Detroit United Railway*, 162 Mich., 460, 463, was finally decided by the Supreme Court of this state Sept: 28, 1910; that this respondent sued out a writ of error from the Supreme Court of the

United States to review and reverse the decision of the State Supreme Court; that pending said appeal to the Supreme Court of the United States, and without waiving any rights, this respondent from and after the 30th day of September, 1910, accepted five cent fares and workingmen's tickets from and to the Alter road which had become the eastern boundary of the City of Detroit by the annexation of the main part of the village of Fairview to the City of Detroit; that the instructions of this respondent to its conductors on Jefferson avenue cars to accept said fares contained the following paragraph:

"These instructions, except as above indicated, are given for the purpose of complying with the recent decision of the Supreme Court of Michigan, but are not intended to remain in force beyond such time as they may be revoked by the company. The acceptance of workingmen's tickets for a ride through to the Alter Road is not to be deemed as a final acceptance by this company of the recent decision of the Supreme Court of Michigan and the extension of a like privilege to passengers paying five 5 cents (5) fare during workingmen's hours is done to avoid confusion and to facilitate the work of the conductors, and is not intended as a recognition of any right on the part of passengers paying such cash fare to ride to and from the Alter Road within the city for one fare."

Although this respondent temporarily put said city fares into effect to and from the Alter Road, it preserved the right of persons boarding the cars in the township or village of Grosse Pointe east of the Alter Road to ride for a five-cent fare to the old city limits at Hurlbut avenue, and of persons boarding the cars between the old and the new city limits, to ride for a single five-cent fare, beyond the Alter Road and into the village or township of Grosse Pointe, according to the terms and rates of fare

fixed by the said grants made by the township and the village of Grosse Pointe in 1891.

23. Further answering, respondent shows that long before the extension of the limits of the City of Detroit by the Acts of 1905 and 1907, in paragraph 10 of this answer referred to, there was constructed and put in operation by respondent's predecessors in title, under and in accordance with the terms of the grant of the Township Board of Greenfield in paragraph 9 of this answer referred to, a street railway upon the Grand River Road from the west line of said township to the then city limits of the City of Detroit that said street railway so constructed has been maintained and operated by respondent's predecessors in title and by respondent under and by virtue of said grant from the time of its construction down to the present time, and is still maintained and operated thereunder, and that the said railway and the rights, privileges and franchises for the construction and operation thereof were acquired by respondent by purchase from the Detroit & Northwestern Railway and prior to the said extensions of the city limits by the said Acts of 1905 and 1907. That neither the Detroit City Railway nor the Grand River Street Railway Company ever owned, operated or controlled any part of the street railway in this paragraph referred to.

That for the purpose of obtaining money for the construction of said railroad, there were issued and sold by said Detroit & Northwestern Railway, the respondent's immediate predecessor in title, bonds secured by a trust deed covering said street railway and all the rights, franchises and privileges conferred by said grant, and that there are now outstanding and unpaid Eight Hundred and Fifty-five Thousand Dollars (\$855,000.00) of said bonds.

That long before the extension of the city limits upon Jefferson avenue from Hurlbut avenue eastward by the Act of 1907, referred to in paragraph 16 of this answer, there was constructed and put in operation by respondent's predecessors in title in and over that part of Jefferson avenue from Hurlbut avenue easterly to the Country Club in the Township of Grosse Pointe, including the portion of said avenue afterwards included in the city by said extension, a street railway under and by virtue of the several grants of the Township of Grosse Pointe hereinbefore referred to. That said railway from Hurlbut avenue easterly after its original construction, was acquired, together with the rights, privileges and franchises under which the same was constructed and operated, by the respondent, by purchase from the Detroit Suburban Railway, which purchase was before the said extension of the city limits by said Act of 1907. That afterwards, but before said extensions of the city limits, and under said ordinance of the village of Fairview of May 16, 1905, hereinbefore referred to, the tracks of the said railway in the part of Jefferson avenue from Hurlbut avenue easterly, comprised within the limits of said village, were re-located and re-constructed by this respondent pursuant to the terms of said ordinance. That said street railway so constructed and re-located and re-constructed has been maintained and operated by respondent's predecessors in title and by respondent under and by virtue of said several grants from the time of its construction down to the present time and is still maintained and operated thereunder. That the Detroit City Railway never owned, operated or controlled any part of said railway in this paragraph mentioned.

23½. This respondent alleges and shows that the grant made by the Township of Greenfield, hereinafter referred to, and attached hereto as an exhibit, and the acceptance

thereof by the grantee therein named, was made under the authority conferred by the terms and provisions of the Street Railway Act of Michigan being Chapter 168 of the Compiled Laws of Michigan for 1897, entitled, "An act to provide for the formation of street railway companies," and the rates of fare in said grant provided for were fixed and established by said agreement between the grantee and the corporate authorities of the said township under the terms and provisions of sections 13 and 20 of said act. In like manner, and with like effect, the several grants (and the acceptances thereof) made by the Township Boards of the Townships of Hamtramck and Grosse Pointe and the Village of Grosse Pointe and Fairview were made and accepted under and by virtue of the authority conferred by said act entitled, "An Act to provided for the formation of street railway companies," hereinabove referred to, and the rates of fare provided for and fixed in said grants were, in like manner, fixed and determined by the agreement of the parties under and by virtue of the provisions of, and the authority conferred by, sections 13 and 20 of said act.

Further answering, this respondent shows that, pursuant to the terms in said grants street railway companies were formed under the provisions of the act last above named, that is to say, the company that was formed, and which accepted the grant and contract with the Township of Greenfield, was incorporated under the terms and provisions of said act to provide for the formation of street railway companies, and constructed and put in operation its railway under said grant and said statute. In like manner, the company which accepted the grants made by the Townships of Hamtramck and Grosse Pointe and the Villages of Grosse Pointe and Fairview, was organized under the provisions of said

act to provide for the formation of street railway companies, and constructed and put in operation the railways provided for in said grants under and by virtue of said grants and the terms and provisions of said act for the formation of street railway companies.

24. Further answering this respondent shows that it was organized on the 28th day of December, 1900, for the term of thirty years under the Michigan Street Railway Act of 1867, and the amendments thereto, the same being Chap. 168 of the Michigan Compiled Laws of 1897, and that the purposes for which the corporation was organized are set forth in the articles of association as follows:

"The purposes for which this corporation is formed, are, to acquire, own, maintain, operate and use the street railways, property and franchises now owned, maintained and operated by the Detroit Electric Railway, The Detroit, Fort Wayne & Belle Isle Railway, The Detroit Citizens' Street Railway Company, and the Detroit Suburban Railway Company, in the City of Detroit and adjacent townships and villages in the County of Wayne and adjacent counties, and to construct, own, maintain, operate and use other street railways in said city and Counties, Townships, and Villages."

This respondent acquired said railways and others under the authority of Sec. 15 of said act, which reads as follows:

"Sec. 15. Any street railway company may also purchase and acquire either at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township, owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights,

privileges and franchises of such company, the same, and upon the same terms as the company whose road and franchises were so acquired might have done. Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway, fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage, whenever the corporation shall deem it expedient so to do."

25. Further answering this respondent shows unto the court that the several grants made by the township of Greenfield, by the township of Grosse Point and by the villages of Grosse Pointe and Fairview, which are now the property of this respondent were subsisting and valid and binding contracts on the part of the parties thereto at and before the time the legislature of Michigan passed the Acts above mentioned extending the territorial limits of the city of Detroit into the township of Greenfield, and into the village of Fairview and the township of Grosse Pointe, and this respondent is advised and submits that if said acts of the legislature are so construed or applied as to affect, interfere with or modify the said contracts, then, the said Acts of the legislature and each of them are in conflict with the provision of the constitution of the United States that no state shall pass any law impairing the obligation of contracts and said acts are also in conflict with the provisions of the fourteenth amendment of the constitution of the United States, that no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

This respondent prays that the petition of the Relator for a writ of mandamus may be denied.

THE DETROIT UNITED RAILWAY.

By Frank W. Brooks,

General Manager.

BRENNAN, DONNELLY & VAN DEMARK,

Attorneys for Respondent.

JOHN J. SPEED,

C. D. JOSLYN,

HINTON E. SPALDING,

FRED A. BAKER,

Of Counsel.

STATE OF MICHIGAN,

COUNTY OF WAYNE—SS.

On this 14th day of February, 1912, before me a Notary Public in and for said county personally appeared Frank W. Brooks and made oath that he has read and knows the contents of the above and foregoing answer by him subscribed, and that the same is true except as to the matters and things therein stated to be on information and belief and as to those matters he believes the same to be true.

JAMES W. BONSALE,

Notary Public, Wayne Co., Mich.

My commission expires April 9, 1915.

EXHIBIT I.

FRANCHISE FROM TOWNSHIP OF GREENFIELD
TO BROWNELL, ET AL.

(November 1, 1897.)

Assignments: Brownell et al. to Grand River Electric
Railway.Grand River Electric Railway to Detroit
& Northwestern Ry.Detroit & Northwestern Railway to De-
troit United Railway.

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, The Township Board of the Township of Greenfield, in the County of Wayne, and State of Michigan, for and in consideration of the sum of One Dollar, the receipt whereof is hereby acknowledged, and for other valuable consideration, have granted and conveyed, and by these presents do grant and convey to Seymour Brownell, James A. Randall and Hoyt Post, and to their successors and assigns, to be organized into a corporation under the laws of the State of Michigan, the exclusive right and privilege of constructing, maintaining and operating a street or tram railway with all necessary and convenient turn-outs, switches, single and double tracks and all necessary appurtenances thereunto belonging for the term of thirty (30) years from the date of the acceptance hereof, upon and along the Grand River road, so called from the west line of said Township of Greenfield to the present city limits of the city of Detroit; but subject, however, to the rights and franchises now vested by law in the Detroit and Howell Plank Road Company, on the following conditions, to-wit:

1. The street railway constructed, maintained and operated under this franchise or grant, shall be operated

by the overhead trolley wire system of electricity, or some other better motive power, subject to the approval of the Township Board of the said township, except that steam or animal power may be used in the construction of said railway, and until the said railway is completed to the Village of Farmington and the power house is in operation; provided the same shall be done within one year from the date of the acceptance of this franchise.

2. That tracks of said railway shall be laid so as to obstruct as little as practicable the free passage of vehicles and carriages along said highway, and so as best to accommodate public travel.

3. In the construction of said tracks the grade shall be made to conform as nearly as practicable with the grade of the highways which they may cross, and first class Bessemer steel rails, weighing not less than fifty-six (56) pounds to the lineal yard, on ties placed not more than two (2) feet apart, shall be used. The gauge of said road shall be four feet, eight and one-half inches (4 ft. 8½ in.).

4. The passenger cars to be used on said railway shall be of modern design, and supplied with suitable appliances and equipments for a suburban electric railway, and they shall be run over said railway as frequently as one every hour, each way, from six o'clock a. m. to nine o'clock p. m. and as much more frequently as the business shall, from time to time, demand, and so as to insure the comfort, convenience and safety of its passengers.

5. Proper culverts and suitable safe crossings at all cross roads and streets, and at the main or principal entrance to all farms along the line of the said railway, shall be constructed and maintained by said railway Company.

6. The construction of said railway under this grant shall be commenced within three months from the date

of the acceptance hereof, and in operation and running not less than fifteen (15) passenger cars each way daily, from the west line of said township of Greenfield, to a connection with a street car line from the city of Detroit, within six months from the date of the acceptance hereof.

7. The rate of fare on the line of said railway shall be five cents (5c) for each passenger, for any distance in said township, and six (6) tickets shall be sold for twenty-five (25c) cents and each ticket shall entitle the holder to the same privilege as a cash fare, and shall be kept for sale on all passenger cars. There shall also be a special ticket good only for children going to or from school, that entitles the holder to ten (10) rides within said township of Greenfield. Such special tickets shall be kept for sale on all passenger cars for thirty cents (30c) each. Children under six years of age when accompanied by their parents or guardians shall ride free.

8. The grantees herein named, or their successors or assigns, shall file a written acceptance of this franchise with the township clerk of said township within sixty (60) days from the date hereof, and at the time of filing said acceptance they shall deposit a certificate of deposit or a certified check for One Thousand Dollars with the township treasurer of said township, such check or certificate shall be safely kept by the said treasurer until the time limit heretofore named shall have expired, when if the terms and conditions of this grant have not been complied with, said check or certificate shall become the property of said township, but if at any time prior to the expiration of the said time limit—to-wit: six months from the date of the acceptance hereof, the said grantee, their successors, or assigns, shall construct and have in operation a railway from the west line of said township of Greenfield to a connection with a street car line from the city of Detroit, the Township Board will cause said

Treasurer to return said check or certificate to said grantees, their successors and assigns.

9. The grantees under this franchise also agree to protect said township of Greenfield from all legal costs and expenses by reason of making this grant or franchise.

10. It is also expressly agreed and understood that said railway shall have the right to carry passengers, mails, express and all kinds of freight over its tracks in said township.

In Witness Whereof the Township Board of the township of Greenfield, Wayne County, Michigan, have hereunto set their hands this first day of November, A. D., 1897.

PETER PROCHASKA,
Supervisor.

WILLIAM MONNIER,
Justice of the Peace.

J. LEWIS CHASE,
Justice of the Peace.

Township Board of the Township of
Greenfield, Wayne County, Michigan.

EXHIBIT 2.

DETROIT CITY RAILWAY COMPANY.

(Approved November 24, 1862.)

Whereas, Cornelius S. Bushnell, John A. Griswold, Nehemiah D. Sperry, Eben N. Wilcox, their associates successors and assigns, propose to organize as a body politic and corporate, under a charter from the Legislature of Michigan, or under the "Act to provide for the construction of Train Railways," approved February 13th, 1855 (Laws of 1855, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the City of Detroit, City or Street Railways; therefore,

Be it ordained by the Common Council of the City of Detroit:

Section 1. That consent, permission and authority is hereby given, granted, and duly vested in Eben N. Wilcox, and his associates, who may be approved by the Council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turn-outs, side tracks, and switches, in and along the course of the streets of, and bridges in, the City of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and prescribed, and in the manner, and upon the condition set forth in this ordinance. (As amended December 27, 1862.)

Section 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through

Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River, and Brush or Beaubien streets; and from Jefferson avenue, through Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street, to the western limits of the city; and through such other streets and avenues in said city, as may, from time to time, be fixed and determined by vote of the Common Council of the said City of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance: And provided, The corporation does not assent, in writing, within thirty days after the passage of said resolution of the Council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense: Provided, always, That the railways on Grand River street, Gratiot street and Michigan avenue, shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue; Provided, always, That said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863.)

Section 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street, to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and the gauge

of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels: Provided, however, That where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first: And provided further, That in all streets which are not paved, or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the Common Council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any time thereafter, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, The consent of the Council is first obtained. (As amended January 11, 1875.)

Section 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving, or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets, or parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the City Engineer. The grantees, and their assigns, shall be required to keep the surface of the streets, inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt and filth, cleared and removed from the same, at the expense of the grantees: Provided, however, That

upon the paved portion of said streets, the materials for repaving shall be supplied at the expense of the city. (As amended January 12, 1863.)

Section 5. The routes of all said railways shall commence in the Woodward avenue road, at Campus Martius; from thence running on their several courses to the outer limits of the city: Provided, That in collecting fare, those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, shall pay only one fare. (As amended January 12, 1863.)

Section 6. Said railway on Woodward avenue, or Witherell street, to Park lot sixty-two, through Jefferson avenue to the eastern limits, and through Jefferson avenue to Woodbridge, through Woodbridge to Third, and up Third to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapoton farm, shall be completed within three years from and after the thirty-first day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm; through Michigan avenue to Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require: Provided, That no such railway shall be required to be laid through any part of such routes, which shall not be worked up to the established grade thereof, until the city shall have completed such work.

Section 7. The cars to be used on said railways shall

be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the Common Council shall prescribe: Provided, always, That said Council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railways shall be run for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways: Provided, That other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

Section 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, Cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

Section 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

Section 10. No car shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

Section 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

Section 12. The grantees, or their assigns, shall em-

ploy careful, sober, and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors, and drivers, to keep vigilant watch for all trains, carriages, or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

Section 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

Section 14. Conductors shall announce to the passengers the names of the principal squares and streets, as the cars reach them.

Section 15. The cars shall, at all times, be entitled to the track, and any vehicles upon the track of said railways shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the Recorder's Court of said City of Detroit; and costs of prosecution shall not be at the expense of the city.

Section 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front, and a green light in the rear.

Section 17. Wherever gas or water pipes, or sewers, are now laid in the streets herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the Gas Company and the Board of Public Works, to take up or remove said pipes or sewers, in such a manner as not unnecessarily to damage or injure said railways or their use, without claim against the city, Gas Company, or Board of Public Works; and the Common Council expressly reserves to itself the right here-

after to lay down, or to permit to be laid down, and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

Section 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted, shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the Council does not extend the time: Provided, That if said grantees shall be delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance, or by the contrivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance. (As amended December 27, 1862.)

Section 19. It is hereby reserved to the Common Council of the City of Detroit, the right to make further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public, in relation to said railways.

Section 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

Section 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the Controller of said city the sum of five thousand dollars in money, or in United States stocks, or in treasury notes, bearing

seven and three-tenths per cent interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete, on or before the first day of October, A. D. 1863; and if the said railways shall not then be completed the sum so deposited shall be forfeited to the city: *Provided, however, That if said grantees, or their assigns, cannot procure the requisite amount of rail of the Philadelphia, or other suitable pattern, to build said railways, within the time specified with a suitable and competent force, then the time shall be extended until such rail can be obtained, and laid with a suitable and competent force: And, provided further, That the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rail cannot be procured. (As amended January 12, 1863.)*

Section 22. The said grantees, and their assigns, shall pay to the treasurer of the City of Detroit, annually, fifteen dollars on each and every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license, for the use of the city, after the term of five years from and after this date.

Section 23. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the Legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and conferred to and upon them, by this ordinance, shall be given, granted and duly vested in said corporation, without any further action, consent, permission or authority of the Common Council, whatever.

Section 24. All ordinances, or parts of ordinances, heretofore made, ordained and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

Section 25. Any wilful violation of, or failure to com-

ply with the provisions of this ordinance, by said Railway Company, or by any agent, conductor, driver, or any person in the employ of said company, shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of any such fine and costs, the court may make a further sentence that the offender be committed to the County Jail or to the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months. (As amended March 29, 1864.)

(Approved August 19, 1863.)

Section 26. Permission is hereby given to the Detroit Railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section twenty-one of said ordinance).

Section 27. As a condition of the acceptance of this permission, the said Detroit City Railway may and shall complete its road and track on Fort street, Michigan avenue, and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864; and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

Section 28. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said track and said plank road; and upon Michigan avenue and Gratiot street, beyond

the pavement, said railway may construct its track with the "T" rail, which is used for street railways, and weighs not less than thirty-three pounds to the yard.

Section 29. The said railway is hereby authorized to extend its track, and run its cars, through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railroad Company.

Section 30. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue and Gratiot street shall each be considered and run as one route, and subject its passengers to the payment of a single fare each: Provided, however, That all cars running north of Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue shall be considered as making a portion of each of said routes respectively.

Section 31. The Detroit City Railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real estate owners as are affected thereby, may, and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood Cemetery, and run its cars thereon at such times as will accommodate the public: Provided, however, No person shall be charged more than one cent either way on this track; and said railway are also authorized to run a track and their cars to Mount Elliott Cemetery, along Mount Elliott avenue, and charge the same rate of fare as to the said Elmwood Cemetery.

Section 32. The Detroit City Railway is hereby authorized to build its track and run its cars from its track on Jefferson avenue, upon and along Randolph street southerly to Atwater street, and thence along Atwater

street easterly to Brush street; and, as said track approaches the Detroit and Milwaukee depot, the said railway may turn the same on to the southerly side of said Atwater street so as to run said cars up to the sidewalk in front of the office buildings of the Detroit and Milwaukee Railway Company. (Approved October 7, 1863.)

(Approved January 24, 1864.)

Section 33. Permission is hereby given to the Detroit City Railway to build its road and track on and through Fort street from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street as aforesaid.

Section 34. Permission is also hereby given to said railway to build its road and track along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city; and such building shall relieve said railway from its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street, from the railroad crossing, through Stanton street and River road to the city limits, with "T" rail, similar and of equal weight to that used on Michigan avenue.

Section 35. The road and track of said railway, from said westerly limits, through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

Section 36. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track by constructing a branch track from their main track to said car house, either through Second street or from Third street through the alley, between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St. Antoine street with their tracks on Jefferson avenue by constructing a branch track from St. Antoine street to said car depot and stables; such branch track to be a single track only, and to intersect said Jefferson avenue track at right angles and by means of turn-tables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenues. (As amended December 15, 1874.)

Section 37. The time for completing the road of said company on Gratiot street is hereby extended to November 1, 1865: Provided, however, That said company shall extend their track as far as Chene street on or before the twentieth day of November next. (Approved October 8, 1864.)

Section 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the Plank Road Company, in such position as shall be agreed on between the Railway and Plank Road Companies: Provided, however, That unless the line agreed on shall be along the center of said street, such agreement shall be first reported to and approved by the Council. (Approved October 8, 1864.)

Section 39. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue, in accordance with the provisions of the ordinance above referred to, being section 3 of this chapter. (Approved January 11, 1875.)

Section 40. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and throughout Jefferson avenue, in the City of Detroit: Provided, expressly, That if hereafter the pavement on said avenue shall be extended, or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track and between the tracks, and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equi-distant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the Common Council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the Common Council. (Approved July 8, 1873.)

(Approved August 20, 1877.)

Section 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the City of Detroit. It is, however, expressly understood and provided: That, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave, or repave all the portion of said avenue

lying within the rails of each track and between the tracks, and shall also keep their portion of the said tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair; and the two inner rails of its said tracks shall be laid equi-distant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the Common Council, and the expense thereof shall include the cost of paving, repaving and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the Common Council.

Section 42. Any provision or condition in the ordinance creating said company, or of any ordinances amendatory thereof, contravening the provisions of the foregoing section are hereby repealed.

ADDITIONAL RIGHT OF WAY.

(Approved November 14, 1879.)

Section 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street within sixty days from this date; and from Chene street to the city limits within such period as the Common Council shall by resolution hereafter declare to be necessary.

Section 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue, from its present terminus on Jefferson avenue, to Atwater street; thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot. And the line on Congress street, heretofore operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus through Randolph street to Atwater

street, which extensions are hereby declared to be additional routes, for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the City Railway Company, consent and authority is hereby given.

Section 3. The ordinances of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit & Grand Trunk Junction Street Railway Company and to the Central Market, Cass Avenue & Third Street Railway Company authority to construct and operate street railways through certain streets of the City of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting to the Detroit City Railway Company certain rights therein set forth.

Section 4. On the 1st of July and January in each half year from the 1st of January, 1880, the Detroit City Railway Company shall pay to the treasurer of the City of Detroit a tax of one per cent * during the period of this ordinance, on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year, as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts. On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by the said company shall run, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their roadway or track, and the spaces between the lines of double tracks and all switches, said company

shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobble stone or some similar durable and proper material to be approved by the Common Council.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the Common Council order.

Section 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from this date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily on such occasions as the Common Council may, by resolution, from time to time designate, to accommodate public processions or any other like convenience.

Section 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the City Clerk of Detroit by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company and the Central Market, Cass Avenue & Third Street Railway Company, or their successors; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Section 7. The right to amend or repeal this ordinance, in case of its violation by said company or companies, is expressly reserved.

EXHIBIT 3.

EAST FORT STREET LINE—CHENE STREET
LINE—CASS AVENUE EXTENSION—DOUBLE
TRACK IN JEFFERSON AVENUE AND
GRATIOT AVENUE LINE—MACK
STREET LINE.

(Approved January 3, 1889.)

AN ORDINANCE supplementary to an ordinance entitled, "An Ordinance to permit certain persons to establish and locate street railways in the City of Detroit," approved November 24, 1862, and supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the City of Detroit approved November 24, 1862, and to the amendments thereto, and for other purposes," approved November 14, 1879, and all amendments and supplements thereto.

It is hereby ordained by the people of the City of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the year 1884 and of amendments thereof and supplements thereto and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled an ordinance to permit certain persons to establish and locate street railways in the City of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit City Railway is hereby authorized and permitted to lay, construct, use and operate a street railway with convenient tracks for turnouts, side-tracks, curves, and switches in and through the following streets and avenues in the City

of Detroit, and the same to keep, maintain, and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884, and in the said ordinance and amendments and supplements thereto, viz.:

Commencing at a point on Congress street east, where its present track on said Congress street east turns on to Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street to Mt. Elliott avenue, thence along said Jefferson avenue double track to the easterly limits of the city.

Also, to extend its track on Cass avenue from where it now turns on to Ledyard street northerly in, along, and through said Cass avenue to the Detroit & Bay City railroad crossing.

Also, to extend its double street railway track in, along, and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the City of Detroit.

Also to lay, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the city of Detroit so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street railway track, in, along and through Mack street, from its junction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track

on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz.: Commencing at a point on Joseph Campau avenue, near the bank of the Detroit River, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street; thence in, along and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the said Detroit City Railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge, and approaches thereto, to Belle Isle Park, to said park, with all the privileges and rights which may be granted to any other street railway.

Section 2. The track hereby authorized on Congress, Brush and Fort street east shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city

limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of the ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the Common Council.

Section 3. Permission and authority is hereby given to the said Detroit City Railway to run its cars at a rate of speed not exceeding ten miles an hour, and it is hereby required to run thereon at an average speed of not less than six miles per hour, and whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said City of Detroit upon any or all of its said lines now in use and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the Board of Public Works.

Section 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit City Railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit City Railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to-wit:

(a) It shall carry passengers from its Cass avenue and Third street, Trumbull avenue, Michigan avenue, and Congress and Baker street lines to any point on the proposed line on Fort street east, or to the easterly

terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker streets, Michigan avenue, Trumbull avenue and Cass avenue and Third street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campan, Atwater and Chene streets shall be entitled to be transferred at Fort street and conveyed by cars running on the proposed line on Fort street east to any point on said Fort street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot and Michigan avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene street line and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot avenue line shall be entitled to be transferred at Chene street to said Chene street line and to be carried to any point thereon in one continuous trip.

(b) A passenger paying a single fare of five cents on the Gratiot avenue line shall be entitled to a continuous ride over said Gratiot avenue line and proposed lines on Chene street and Fort street to the Belle Isle Bridge; and from the Belle Isle Bridge, in reverse direction, over the Fort street east, Chene street, and Gratiot avenue lines for a single fare of five cents for one continuous trip.

(c) It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot avenue

lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

(d) Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs "A," "B" and "C" of this section.

(e) It shall within six months take up and remove its turntable now at the intersection of its Jefferson and Woodward lines and shall run the cars on said Woodward avenue to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

Section 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period fixed by the ordinance, approved November 14, 1879; that is to say until November 14, 1909.

Section 6. It is hereby reserved to the Common Council of the City of Detroit, the right to make such further rules, orders, or regulations as may from time to time be deemed by the Common Council necessary to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

Section 7. This ordinance shall take immediate effect when said Detroit City Railway shall have filed with the City Clerk a written acceptance of the same, and shall execute a bond to the City of Detroit, in the sum of \$50,000, to be approved by the Common Council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bonds shall be filed within thirty days of the approval of this ordinance by the Mayor.

EXHIBIT 4.

RESOLUTIONS OF OCT. 26, 1909.

By Ald. Heineman:

Oct. 26, 1909.

Whereas, There is now pending in the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, a case entitled: Guaranty Trust Company of New York vs. City of Detroit and others, which involves the validity of an ordinance passed by the Common Council of the City of Detroit and commonly called the Hally Ordinance, which ordinance among other things prescribed the terms and conditions under which a street railway might continue to operate cars when and where its franchise right to do so had expired; and

Whereas, The Court has issued a temporary injunction whereby the City of Detroit, its agents, servants and attorneys are strictly restrained and enjoined from publishing or attempting to publish that ordinance and are likewise enjoined from enforcing or attempting to enforce by any means whatsoever the said ordinance; and

Whereas, Said ordinance is without force or effect until published, and it is the duty of the City of Detroit to respect and obey the mandate of the Court; and

Whereas, The franchise right of the Detroit United Railway, as the successor in title, to operate a street railway on Woodward avenue from Pallister avenue to the railroad crossing expired July 13, 1906, and has not been renewed by the City of Detroit; and

Whereas, The franchise right of the Detroit United Railway, as the successor in title, to operate a street railway line on Twenty-fourth street from Baker street to Dix avenue, and on Dix avenue from Twenty-fourth street to Livernois avenue, either expired on April 17,

1906, or will have expired Nov. 14, 1909, and the City of Detroit has granted no franchise to operate cars on said streets after Nov. 14, 1909; and

Whereas, The franchise right of the Detroit United Railway, as the successor in title, to operate a street railway line on the following streets and portions of streets will have expired on Nov. 14, 1909, to-wit:

MICHIGAN AVENUE.

The north track from Woodward avenue to Rowland street, and from Porter street to Livernois avenue; the south track from Abbott street to Livernois avenue.

CONGRESS AND BAKER STREETS.

On Mt. Elliott avenue, from Jefferson avenue to Fort street east; on Fort street east to Brush street; on Brush street, from Fort street east to Congress street.

The north track on Congress street, from Brush street to Woodward avenue; all tracks from Woodward avenue westerly to Sixth street; on Brooklyn avenue from Porter street to Baker street; on Baker street from Brooklyn avenue to Twenty-fourth street; on Twenty-third street to Dix avenue from Baker street; on Dix avenue from Twenty-third street to Twenty-fourth street.

CASS AVENUE AND THIRD STREET.

On Larned street from Third street to Griswold street; on Griswold street from Larned street to State street; on State street, a single track from Griswold street to Rowland street; all tracks on State street, between Rowland street and Cass avenue; on Cass avenue from State street to Ledyard street; on Ledyard street from Cass avenue to Third avenue; on Third avenue from Ledyard street to Holden avenue; on Holden avenue from Third avenue to Greenwood avenue.

TRUMBULL AVENUE.

From Abbott street northerly to the railroad crossing.

ATWATER STREET.

..

From Woodward avenue to Brush street; on Brush street from Atwater street to Jefferson avenue.

WOODWARD AVENUE.

From the railroad crossing southerly to Grand River avenue; from Fort street west southerly to the river, all tracks except one.

BRUSH AND RUSSELL STREETS.

On Brush street from Gratiot avenue to Rowena street; on Rowena street from Brush street to St. Antoine street; on St. Antoine street from Rowena to Farnsworth street; on Farnsworth street from St. Antoine street to Russell street; on Russell street north from Farnsworth street to the end of the line.

CHENE STREET.

On Atwater street from Jos. Campau avenue to Chene street; on Chene street from Atwater street northerly to Newton street.

JEFFERSON AVENUE.

From a point 194 feet west of the west line of Fifth street to Concord avenue; from Field avenue to a point 200 feet east of Baldwin avenue.

GRATIOT AVENUE.

On Monroe avenue, the northwest track from Woodward avenue to Farmer street; on Monroe avenue, both tracks from Farmer street to Randolph street; on Randolph street from Monroe avenue to Gratiot avenue; on Gratiot avenue from Randolph street to Sheridan avenue.

MACK AVENUE.

From Gratiot avenue to Baldwin avenue.

And the City of Detroit has granted no franchise

right to operate cars on said streets or portions of streets after Nov. 14, 1909; and

Whereas, All of said streets and portions of streets would after Nov. 14, 1909, be subject to the terms and conditions of the Hally ordinance, if the same is a valid enactment and is accepted by the Detroit United Railway; and

Whereas, No term franchise or agreement under the revised constitution can be valid or binding unless the franchise or agreement shall have first received the affirmative vote of three-fifths of the electors of the city; and

Whereas, Under the revised constitution every street railway company is denied the right to use the highways, streets, alleys or public places of any city without the consent of the duly constituted authorities of such city, and is denied the right to transact a local business in the city without first obtaining a franchise therefor from such city. Therefore, be it

Resolved, That consent, permission, and authority is hereby granted to the Detroit United Railway to continue from day to day after November 14, 1909; to operate its cars upon the streets and portions of streets above set forth under the same terms and conditions, except as to percentages on gross receipts now prevailing in the City of Detroit, whether due to contract agreement or not, upon the payment weekly by the Detroit United Railway to the City Treasurer of the sum of Three Hundred Dollars for each day that the streets and portions of streets above set forth are used by said company in the operation of its railway or railways; and be it further

Resolved, That this resolution is subject to revocation at any time at the will of the Common Council or of the people of the City of Detroit.

EXHIBIT 5.

PRESIDENT HUTCHINS LETTER OF NOV. 13, 1909.

Nov. 13, 1909.

To the Honorable the Mayor and Common Council:

Gentlemen,—This company has been informed of the passage by your honorable body of two certain resolutions concerning the operation by the company of its lines of street railway on certain streets, the purpose of said resolutions being intended to express certain claims made by your honorable body in behalf of the city respecting the right of the company to operate its cars on said certain streets, and also to state certain terms and conditions which may be enforced against the company after the 14th of November, 1909.

It is noted that one of these resolutions, that adopted by your honorable body Oct. 19, 1909, which only came to the knowledge of this company through the ordinary channels of publication, states that certain franchises have heretofore terminated on Nov. 14, 1909, and that any further use by the company of its tracks and franchises on the streets and parts of streets therein named, will be by the sufferance only and without express or implied waiver on the part of the city respecting its rights in regard to such streets.

The other resolution, namely, that passed at a meeting of your honorable body Oct. 26, 1909, a certified copy of which was served on this company Nov. 11, 1909, recites that the city claims that on certain streets and avenues therein named that no franchise right has been granted to operate cars on said streets or parts of streets after Nov. 14, 1909, and said resolution provides that the continued operation of cars by the company on said streets after said date, shall be conditioned on their operation by the company under and subject to

all the terms and conditions under which they are now operated, except as to the condition of a specific tax as heretofore provided, and upon an added condition that the company shall pay to the city a stated sum of Three Hundred Dollars (\$300) per day.

The company does not agree with the views and claims stated in said resolutions, which, in its opinion, are contrary to the rights of the company, and believes that after due investigation and consideration, you will concede that your position is erroneous. The company, however, recognizes that you are equally desirous with the company that the public shall not be deprived of any service that they have heretofore enjoyed, and that the interest, comfort and convenience of the public will best be served by continuing uninterruptedly the service as now rendered, pending the results of an adjustment of all matters of difference which it is believed all parties desire.

The company, therefore, without waiving any rights or privileges to which it is entitled under present conditions, and conceding that the city does not waive any of its rights or privileges, and without prejudice to the rights or privileges of either the city or the company, will, in the exercise of its rights and duties, continue to maintain and operate the lines in question under the terms and conditions under which the same are now maintained and operated, and to render service as heretofore, and for the reasons above indicated and to avoid litigation will in addition pay to the city the sum of three hundred dollars (\$300) per day for the time being, or until such time as the relations between the company and the city are readjusted.

Yours very truly,

J. C. HUTCHINS,

President.

EXHIBIT 6.

HAMTRAMCK TOWNSHIP TO HAMTRAMCK
STREET RAILWAY COMPANY.

(August 12, 1873.)

Assigned: Hamtramck Street Railway Company to Detroit City Railway Company.

Detroit City Railway Company to Detroit Street Railway Company.

Detroit Street Railway Company to Detroit Citizens' Street Railway Company.

Detroit Citizens' Street Railway Company to Detroit United Railway.

JEFFERSON AND MACK.

Whereas, Moses W. Field, S. Dow Elwood and William B. Wesson, and their associates, have organized a body corporate under the laws of the State of Michigan, by the name of the "Hamtramck Street Railway Company" for the purpose of constructing, maintaining and operating a street railway along or upon certain streets or highways in the Township of Hamtramck, County of Wayne, State of Michigan.

Now, therefore, we the undersigned, supervisors and highway commissioners of said township of Hamtramck, hereby consent to, and permission and authority are hereby granted to said Hamtramck Street Railway Company to construct, build, maintain and operate a street railway upon the streets and avenues of said township as follows:

First. Said railway shall commence at the western line of said township at the intersection of Mack street and extend along or upon said street to the eastern line of said township, and on McClellan avenue at the

intersection of said Mack street, and extending along or upon said avenue to Jefferson avenue, and from thence along or upon Jefferson avenue to the western line of said township at the intersection of Mt. Elliott avenue, and thence along or upon Mt. Elliott avenue northerly to the Fort Gratiot road; also along or upon Van Dyke avenue from said Jefferson avenue to the Mack road, so-called, and along or upon Congress street, Lafayette street and German street, and through said streets from Mt. Elliott avenue to Van Dyke avenue; also along or upon Frontenac, Lincoln and Baldwin avenues from Jefferson avenue to the Gratiot road, also along or upon Jefferson avenue from Mt. Elliott avenue to the line of Grosse Pointe.

Second. At least two miles of said street railway shall be constructed and put in operation on or before the first day of September, A. D. 1890.

Third. Said company shall run cars on said road as often as once in every hour, during at least ten hours of every day.

Fourth. Said company shall be entitled to charge for and receive from each passenger such sum as it shall from time to time prescribe, not exceeding five (5) cents; and for passenger's baggage or effects, not exceeding twenty pounds an additional sum not exceeding the fare chargeable for a passenger. For special cars, or for cars for freight, the company may charge such rates as may be agreed upon between the company and parties using the same.

Fifth. Upon the cars run the night-time a red light shall be displayed at the front of the car and a white light at the rear of the car.

Sixth. Said railway company shall have the exclusive right of said streets and avenues for the purpose of

operating a street railway thereon; and the cars moving on the tracks laid therein by said railway company shall have the preference of "right-of-way" at all times; and for the purpose of further encouraging this much desired improvement, and considering its convenience to the public and the benefit thereof to the lands of said township, it is hereby agreed that no other street railway company shall hereafter be permitted to construct and operate a street railway in the streets and avenues mentioned herein.

WITNESS our hands the twelfth day of August,
A. D. 1873.

James Holihan,
Supervisor.

Henry Kiesling,
Michael Kilcline.

High Commissioners Township of Hamtramck.

HAMTRAMCK TOWNSHIP TO DETROIT CITY RAILWAY.

(November 1, 1881.)

Confirming Franchise.

The Detroit City Railway having purchased and become the owner of all the rights, franchises and property of the Hamtramck Street Railway Company, and, having agreed with that company to operate their line of street railway on Jefferson avenue (as extended) through the township of Hamtramck—the undersigned, the Supervisor and Commissioner of Highways of said township, by virtue of the authority in them vested, do hereby grant and confirm unto said Detroit City Railway, and to its successors and assigns, all of the rights, privileges and franchises heretofore granted to said Hamtramck Street Railway Company by virtue of

two certain instruments bearing date respectively August 29, 1868 and August 12, 1873, and they hereby assent that the said Detroit City Railway and its successors and assigns, may build and extend their road and may operate their railway over the route and along the said highway in the instrument above referred to.

Signed by the Supervisor and the Commissioner of Highways of the township of Hamtramck.

EXHIBIT 7.

HAMTRAMCK TOWNSHIP TO HENDRIE ET AL.
(April 14, 1891.)

Assigned: Hendrie et al. to Jefferson Avenue Railway.
Jefferson Avenue Railway to Detroit Suburban Railway.

Hendrie et al. to Detroit Suburban Railway
(confirming).

Detroit Suburban Railway to Detroit
United Railway.

JEFFERSON AVENUE.

WHEREAS, George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie and Cameron Currie and their associates and assigns, are about to organize a railway company for the purpose of constructing or purchasing a railway in, along, and through Jefferson avenue, from the easterly limits of the City of Detroit to a point in the township of Grosse Pointe on the shore of Lake St. Clair, through the township of Hamtramck and Grosse Pointe and the village of Grosse Pointe; therefore it is agreed by the Township Board of Hamtramck and the Highway Commissioner of said township assenting to and ratifying the same, that consent, permission and authority is hereby given to the said George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie, Cameron Currie and their associates and assigns, to lay, construct, maintain and operate a single or double track railway, with suitable switches, turn-outs, and turn-tables, in, along and through the said street or highway known as the Jefferson avenue or Lake Shore road, through the township of Hamtramck

from the easterly limits of the said township to the westerly limits thereof, and the same to keep, maintain and use.

2. The track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles and carriages along said highway, and shall be laid along the north side of said highway in so far as the same is feasible. And the said grantees, their associates or assigns, shall construct and have the said railway in operation within two years from the date hereof.

3. The said grantees and their assigns shall maintain proper and safe crossings at all cross-roads and streets, and at the main or principal entrances to all farms along its line.

4. The said grantees, their associates and assigns, organized into a railway company under the laws of this state shall be entitled to charge not more than five cents for the carriage of any single passenger for one continuous trip over that portion of the railway within said township, and it shall carry any single passenger from any point on said railway line in said townships to any point on said Jefferson avenue in the City of Detroit for a single fare of five cents, and from any point on said Jefferson avenue in said City of Detroit to any point on said line in said township for a single fare of five cents, provided that for extra or special cars or trains run by special request under private contracts the said railroad may charge special rates.

5. If said grantees, their associates and assigns, should desire to build, maintain and operate said line of railway or any part thereof on a private way obtained by them lying substantially parallel to said Jefferson avenue or Lake Shore road or either side thereof, or shall purchase or acquire track now in existence, the

same shall be considered as a compliance with the terms and requirements of this contract or consent.

6. The written consent of the said grantees to this contract and consent shall be filed with the township clerk within ten days from this date.

Roger Echlin,
G. W. Voorhis,
Laurence Dalton,
Columbus Burnett

Township Board.

William Boehmer,
Highway Commissioner.

EXHIBIT 8.

GROSSE POINTE VILLAGE TO HENDRIE ET AL.

(March 13, 1891.)

Assigned: Hendrie et al., to Jefferson Avenue Railway.
 Jefferson Avenue Railway to Detroit Suburban.

Hendrie et al., to Detroit Suburban (confirming).

Detroit Suburban Railway to Detroit United Ry.

JEFFERSON AVENUE.

1. Whereas, George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie and Cameron Currie and their associates and assigns, are about to organize a railway company for the purpose of constructing or purchasing a railway in, along, and through Jefferson Avenue from the Easterly limits of the City of Detroit to a point in the township of Grosse Pointe on the shore of Lake St. Clair, through the township of Hamtramck, Grosse Pointe, and the Village of Grosse Pointe.

Therefore it is agreed by the president and trustees comprising the village board of the village of Grosse Pointe, that consent, permission, and authority is hereby given to the said George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Streathearn Hendrie and Cameron Currie, and their associates and assigns, to lay, construct, maintain, and operate a single or double track railway, with suitable switches, turn-outs, and turntables, in, along, and through said streets or highway known as the Jefferson Avenue or Lake Shore Road, through the village of Grosse Pointe, from the westerly

line of the village to the easterly village limits, also northerly on the Fisher Road, so-called, and easterly on a private way to be acquired by said grantees or their assigns, substantially parallel to Jefferson Avenue or River Road to the easterly limits of the village, and the same to keep, maintain, and use, and to operate thereon railway cars. The right to go on Fisher Road is not to be exercised, unless the grantees are prevented by legal proceedings from building on Jefferson Avenue easterly of said Fisher Road.

2. The track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles and carriages along said highway, and shall be laid along one side of the said street in so far as the same is feasible. And the said grantees shall construct and have the said railway in operation within two years from the date hereof.

3. The said grantees and their assigns shall maintain proper and safe crossings at all cross-roads and streets, and at the main or principal entrance to all farms along its line.

4. The rate of fare for a single passenger shall not exceed two cents per mile, but said grantee or their assigns shall be entitled to charge not to exceed five cents for one continuous trip over any portion of the line within said village.

5. When the said grantees, their associates, or assigns, shall have completed a railway to the easterly limits of Detroit, through cars shall be run each way to and from the said City Limits at least four times each day excepting Sunday, and the said grantees, shall have said line to Detroit completed and in operation within two years from this date. Provided, however, if the right of way is obtained through the townships of Grosse Pointe and

Hamtramck, the road shall be constructed and in operation by July 1, 1891, to the Club House, so-called.

6. If said grantees, their associates, or assigns, should desire to build and operate said line of railway, or any part thereof, on a private way obtained by them lying substantially parallel to said Jefferson Avenue or River Road, on either side thereof, the same shall be considered as a compliance with the terms and requirements of this contract or consent.

7. The written consent of said grantees to this contract and consent shall be filed with the Clerk within ten days from this date.

(Sgd.) E. G. MORAN,
President.

ALEXANDER MORAN,
JOHN NEFF,
Trustees.

JOHN McLEAN,
FRED G. MORAN,
CONRAD FISHER,
CHAS. BEYER,
Trustees.

Repealed by agreement, signed by Village of Grosse Pointe and Detroit Suburban Railway Company, dated, April 17th, 1893.

GROSSE POINTE VILLAGE TO DETROIT SUBURBAN RAILWAY COMPANY.

Assigned: Detroit Suburban Railway Co. to Detroit
United Ry.

(April 17, 1893.)

JEFFERSON AVENUE.

Section 1. The village of Grosse Pointe ordains,
That, consent, permission, and authority are hereby

given, granted, and duly vested in the Detroit Suburban Railway Company, its successors, and assigns, to construct, maintain, and operate a single or double track railway, with all necessary and convenient tracks, or turnouts, or side tracks, switches, poles, wires and all other appurtenances thereunto belonging or appertaining, on and along Jefferson avenue or Lake Shore road, through said village from the westerly limits to the Fisher road; also northerly from said Jefferson avenue, or Lake Shore road, on and along the Fisher road (so-called), to the northerly limits of said village; also easterly from said Fisher road on and along any private way which may be acquired by said company, or its successors or assigns, or on any one public highway that may be opened, to the easterly limits of said village; and to keep, maintain, and operate on each end all of said streets, roads, and ways above specified, street railway cars and carriages during all the time hereafter specified and prescribed, and in manner set forth in this ordinance.

Sec. 2. The said railway shall be constructed and in operation from its present terminus on and along Fisher road to the said proposed terminus on and along Fisher road to the said proposed new private or public road, and on and along said proposed new private or public road to the Moran road, on or before June 17, 1893; to the Morass road on or before August 17, 1893; and to the easterly limits of said village on or before April 17, 1894.

Sec. 3. The track on said railway shall, where practicable, be laid on one side of the road, and so laid as to avoid as far as may be any obstruction to the free passage of vehicles, and proper and safe crossings at all cross-roads and streets and at the entrances to the farms along the line shall be maintained. Splices in any trol-

ley wire which may be used shall be made at the crossing of Fisher, Moran, Kirby and Moross roads; and said company shall permit buildings to be moved across said tracks at these places.

Sec. 4. The cars to be used on said railway shall be operated by electricity or horses, and shall be run for the purpose of transferring freight, passengers, and their ordinary baggage.

Sec. 5. Through cars shall be run each way to and from the city limits of Detroit at least six times each day, and between May first and November first of each year a car shall leave Third street, in Detroit, at nine o'clock P. M. each evening and make a complete round trip to the eastern terminus of said track. And cars shall run oftener and at different hours, if the trustees of said village so require, provided, however, such requirements must be based on the reasonable demands and requirements of travel and business.

Sec. 6. Coaches to carry not less than fifteen persons shall be run on and after May 1, 1893, from the terminus of the said railway, as it may from time to time be finished and operated, to the easterly limits of said village, at least six times each way per day, until said railway is completed and operated to the Moross road.

Sec. 7. One fare for a continuous ride through said village, whether the same be by car or coach, or part way by car and part way by coach, shall be five cents, making a ten-cent fare from the water works to the easterly limits of said village; but any one fare shall not be less than five cents within said village.

Sec. 8. If the said village shall hereafter decide that it is necessary or advisable that a street railway be constructed along the Lake Shore road, in said village, then and in that event said Detroit Suburban Railway

Company shall have the first privilege of constructing and operating said railway.

Sec. 9. The powers and privileges conferred by the provisions of this ordinance shall exist on and after April 17, 1893, for the period of thirty years.

Sec. 10. The said Detroit Suburban Railway Company shall, upon acceptance of this franchise, execute to the president and trustees of said village, a good and acceptable bond in the sum of six thousand dollars, for the performance of the conditions hereof, on the part of said company to be performed.

Sec. 11. If said Detroit Suburban Railway Company fails to construct and have in operation said railway to Moran road and to the Moross road and to the easterly limits of the said village within the said times limited therefor, then all rights granted hereby shall cease and terminate, and the full penalty of said bonds shall be forfeited to said village.

Sec. 12. This ordinance shall take immediate effect upon its acceptance by said company, which acceptance shall be filed by it in the office of the clerk of Grosse Pointe village.

Passed by the Village Council of Grosse Pointe, April 17, 1893.

(Signed) Edmund G. Moran,
President.
Theo. F. Damerow,
Clerk.

GROSSE POINTE VILLAGE TO DETROIT
SUBURBAN RAILWAY COMPANY.

(August 19, 1895.)

Assigned: Detroit Suburban Railway Co. to Detroit
United Railway.

Section 1. The village of Grosse Pointe, ordains, that consent, permission and authority are hereby given, granted, and duly vested in the Detroit Suburban Railway Company, its successors and assigns, to construct an additional railway track, with all necessary cross-overs, poles, wires and other appurtenances thereunto, belonging or appertaining on and along Jefferson avenue or Lake Shore road through said village, from the westerly limits to the easterly limits thereof.

Sec. 2. Said tracks shall be laid by said company under the supervision of the properly appointed officers or agent of said village and shall be laid where said officer or agent shall direct and shall be laid so the ends of the ties shall be sunk so as not to unnecessarily interfere with passage over the road bed.

Sec. 3. The cars to be used on said railway shall be operated by electricity or other power approved by the Village Board, and shall be run for the purpose of transferring freight, passengers and their ordinary baggage.

Sec. 4. One fare for a continuous ride from the present easterly limits of the City of Detroit to the present easterly limits of said village shall not exceed five cents.

Sec. 5. The right is reserved to the Village Board of said village to make such further reasonable rules, orders, or regulations as may be deemed necessary to protect the interest, safety, welfare, or accommodation of the public in relation to said railway, and the operation of its ditches and conditions of its road beds.

Sec. 6. In case it shall be necessary to move any

building upon or across Jefferson avenue, the said Railway Company shall arrange its wires to permit the moving of said building upon proper notice being given, and such building shall be moved at such times as will not interfere materially with the public travel upon said railway.

Sec. 7. Cars shall be run from Woodward avenue, Detroit, to the easterly limits of the village of Grosse Pointe at intervals of not greater than thirty minutes and the last car shall leave Woodward avenue for the easterly limits of the village not earlier than 11:15 o'clock P. M. each day except Sunday. The first car shall leave the westerly limits of said village at 6:15 A. M. on week days for Detroit.

Sec. 8. It shall be the duty of said company to cut all weeds and large grass growing at any time upon its tracks or roadways, and to see that proper drainage is maintained not in any way interfering with the drainage as now maintained.

Sec. 9. The powers and privileges conferred by the provisions of this ordinance shall exist for a period of thirty years from and after April 17, 1893.

Sec. 10. This ordinance is supplementary to two certain ordinances granted by said village, viz: One dated March 13, 1891, to George Hendrie, William B. Moran, John C. Donnelly, Strathearn Hendrie and Cameron Currie, and their associates and assigns. The other, dated April 17, 1893, from said village to said Detroit Suburban Railway Company.

Sec. 11. The right to amend or appeal this ordinance in case of its violation by said company and its assigns is reserved.

Sec. 12. The said Detroit Suburban Railway Company shall execute to the president and trustees of said village, good and acceptable bond in the sum of five

thousand dollars for the faithful performance of the conditions hereon, on the part of said company to be performed.

Sec. 13. This ordinance shall take immediate (effect) upon its acceptance by said company, which said acceptance shall be filed in the office of the clerk of Grosse Pointe Village.

Passed by the Village Council of Grosse Pointe, August 19, A. D. 1895.

Francis L. Cadieux,
President of the Village of Grosse Pointe.
Theo F. Damerow,
Clerk.

EXHIBIT 9.

GROSSE POINTE TOWNSHIP TO HENDRIE ET AL
(April 8, 1891.)

JEFFERSON AVENUE.

Assigned: Hendrie et al. to Jefferson Avenue Railway.
Jefferson Avenue Railway to Detroit Suburban Railway.

Hendrie et al. to Detroit Suburban Railway
(confirming).

Detroit Suburban Railway to Detroit United
Railway.

1. WHEREAS, George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie, and Cameron Currie, and their associates and assigns, are about to organize a railway company for the purpose of constructing or purchasing a railway in, along and through Jefferson avenue from the easterly limits of the City of Detroit to a point in the Township of Grosse Pointe on the shore of Lake St. Clair through the Townships of Hamtramck and Grosse Pointe and the village of Grosse Pointe; therefore, it is agreed by the Township Board of Grosse Pointe and the Highway Commissioner of said Township assenting to the ratifying the same, that consent, permission and authority is hereby given to the said George Hendrie, William B. Moran, George S. Davis, John C. Donnelly, Strathearn Hendrie, Cameron Currie and their associates and assigns, to lay, construct, maintain and operate a single or double track railway with suitable switches, turn-

outs and turn-tables in, along and through the said street or highway known as the Jefferson avenue or Lake Shore road, through the township of Grosse Pointe from the easterly limits of the Township of Hamtramck to a point on said Jefferson avenue or Lake Shore road where the same intersects and crosses the line between the counties of Wayne and Macomb, and the same to keep, maintain and use.

2. The track of said railway shall be laid so as to obstruct as little as possible the free passage of vehicles and carriages along said highway, and shall be laid along one side of said highway in so far as the same is feasible. Provided, however, that on that portion of said easterly of Fox Creek bridge, so-called, to the village of Grosse Pointe, said track shall be built on the southerly side thereof, unless said grantee, their associates and assigns, shall purchase from the property owners the right to build on the northerly side. And that the said grantees, their associates or assigns, shall construct and have the said railway in operation within two years from the date hereof.

3. The said grantees and their assigns shall maintain proper and safe crossings at all cross roads and streets, and at the main or principal entrance to all farms along its line.

4. The said grantees, their associates and assigns, organized into a railway company under the laws of this State, shall be entitled to charge not more than five cents for the carriage of any single passenger for one continuous trip over that portion of the railway within said township easterly of the village of Grosse Pointe and a like amount for any passenger for one continuous trip over any portion of said railway westerly of said village in said township, and provided that for extra or

special cars or trains over and above the number hereinafter fixed for each day, and for extra cars or trains not on the time card on Sunday, the said railway company may charge special rates or the full rate of fare fixed by law, and shall carry single passengers from any point westerly of Grosse Pointe village to any point on Jefferson avenue in the City of Detroit, for a single fare of ten cents, and from any point on said Jefferson avenue, in said city, to any point on said line westerly of the village of Grosse Pointe for a single fare of ten cents, on the trains called for by the following section.

5. When the said grantees, their associates or assigns, shall have completed a railway to the easterly limits of the City of Detroit their cars shall be run each way to and from the said city limits at least four times each day excepting Sunday, and the said grantees shall have the said railway completed on that portion of the road between Detroit and the village of Grosse Pointe, on or before the first day of July, 1891, unless prevented by legal proceedings. Provided, however, that nothing herein contained shall be construed as limiting the right of the said grantees, their associates and assigns, and the railroad company, when incorporated, to run and operate said railway on Sunday, or to prohibit them from so doing.

6. If said grantees, their associates or assigns, should desire to build, maintain, and operate said line of railway, or any part thereof, on a private way obtained by them, lying substantially parallel to said Jefferson avenue or Lake Shore road, on either side thereof, the same shall be considered as a compliance with the terms and requirements of this contract or consent.

7. The written consent of the said grantees to this

contract and consent shall be filed with the township clerk within ten days from this date.

David Trombley,
Supervisor.

Stephen Young,
Justice.

Robert Trombley,
Justice.

George H. Kelly,
Clerk.

William G. Diegel,
Highway Commissioner.

EXHIBIT 10.

ORDINANCE OF VILLAGE OF FAIRVIEW TO
DETROIT UNITED RAILWAY, MAY 16, 1905.

AN ORDINANCE granting consent, permission and authority to the Detroit United Railway to construct, build, maintain and operate a double track street railway on Jefferson avenue, or the Lake Shore road, so-called, through the Village of Fairview from the westerly limits to the easterly limits thereof.

WHEREAS, On the ninth day of April A. D 1891, authority was granted by the Township Board of the Township of Grosse Pointe to certain persons, their associates and assigns, to construct and operate a line of railway on Jefferson avenue or the Lake Shore road through said Township, which said line of railway has been constructed in accordance with the terms of said grant, partly on the said highway and partly on private rights of way owned or leased by said railway, and is now being maintained and operated by the Detroit United Railway as successor or assigns of said original grantees in said franchise of 1891; and

WHEREAS, Since the granting of said franchise the Village of Fairview has become incorporated and comprises a portion of the former Township of Grosse Pointe through which said grant or franchise extended, which said village did on or about the sixth day of December A. D. 1904, grant permission to said Detroit United Railway to construct, maintain and use tracks connecting its car barns in said Village with the main tracks on said avenue and to construct certain suitable "Y" tracks and loops; and

WHEREAS, The said Village has caused the said

Jefferson avenue to be widened so as to embrace the private rights of way of the said railway, and it is now proposed by said village to pave said highway known as Jefferson avenue or Lake Shore road, and it is desired by said village that the tracks of said railway maintained and used under said above mentioned grant or franchises be moved into the center of the highway and the said Detroit United Railway has agreed under certain conditions to move said tracks to the center of the highway at its own expense; therefore,

The Village of Fairview Ordains:

Sec. 1. That consent, permission and authority is hereby given, granted and duly vested in the Detroit United Railway, a corporation organized and existing under the laws of the State of Michigan, its successors and assigns, to construct maintain and operate a double track for a street railway with all the necessary and convenient tracks for turnouts, side tracks and switches, and connections in, along and upon Jefferson avenue or the Lake Shore road, so-called, through said village from the westerly limits thereof to the easterly limits thereof together with the necessary poles and wires and all other appurtenances belonging or appertaining to a street railway operated by electricity by means of the over-head trolley system, and the same to keep, maintain and operate thereon a line of street railway for and during the term hereinafter specified and in the manner and upon the conditions hereinafter set forth.

Sec. 2. The said tracks shall at the expense of the said grantee be moved from their present location at the side of the highway to the center thereof where they shall be laid to conform to the standard gauge and with the same distance between the tracks as is now adopted in the city of Detroit, and shall be laid to such grade as may be established by the said village and, as

nearly as may be, flush with the surface of the pavement at the intersection of cross streets. A space of eighteen feet in width is reserved for said tracks between cross streets east of the St. Jean road, which shall be marked off at the expense of the village by stone copping or curb from the paved portion of the street, and the same to be maintained as a grass lawn or plat by said grantee and graded up flush with the top of the rails of its said tracks thereon. The said grantee shall pave the space between the easterly line of Hillger avenue and at intersecting streets east of Hillger avenue, with cedar block pavement on a stone foundation, and shall thereafter keep up and maintain the same. So much of the said tracks as are paved as above provided, shall be laid with deep seven-inch "T" girder rails and the work of moving said tracks to the center of the highway and grading and paving as herein provided shall be done at the same time, as nearly as may be, that the said village grades or paves the other portion of the said Jefferson avenue or Lake Shore road.

Sec. 3. The railway constructed, maintained and operated under this grant, and the above described grant of 1891, shall be operated by the overhead trolley wire system of electricity, or such other modern rapid power as said grantee may from time to time deem expedient, and the cars and other equipment shall be modern and made comfortable and sufficient for the accommodation of the public. The cars of said grantee shall at all times be entitled to the tracks and any vehicle upon the tracks of said railway shall turn out so as to leave said tracks unobstructed. Said grantee shall be entitled to haul trains for construction, freight or other purposes for general traffic, provided the same shall not interfere with regular passenger traffic. The rate of fare for a single ride for a continuous trip for any distance in one direc-

tion on said Jefferson avenue within the Village of Fairview shall be five (5) cents, provided that for extra or special cars or trains not on the time card said grantee, its successors or assigns may charge special rates.

Sec. 4. Nothing in this grant or agreement shall be construed as altering, amending or repealing the grant or franchise of 1891, or the rights granted said Detroit United Railway by the resolution of December 6th, 1904, above described except as the same is necessarily altered by the requirements as to paving herein contained and by placing said tracks in the center of the highway, and said grants shall remain in full force and effect.

Sec. 5. The terms, conditions and agreements herein contained shall constitute a binding contract between said Village of Fairview and said corporation, its successors and assigns, for a period of thirty (30) years from the third day of May, 1905, and the same shall take effect upon its acceptance in writing by said corporation, if said acceptance is filed within thirty (30) days from the date of its passage with the clerk of said village, it being expressly agreed that the said Detroit United Railway by its acceptance of this grant relinquishes to said village all of its perpetual rights and its rights to the private rights of way above referred to and which are now embraced within the limits of the said avenue.

OPINION OF JUDGE HOSMER.

CITY OF DETROIT,

Relator,

vs.

DETROIT UNITED RAILWAY,
Respondent.

No. 54700.

STATE OF MICHIGAN.—THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE.

This is a mandamus to compel the respondent to carry passengers for a single five-cent fare and during workingmen's ticket hours for a single ticket between the easterly city limits at or near the Alter road and Jefferson avenue and the northwesterly city limits on Grand River avenue. The cars are operated between these points as a single line. The petition charges that an extra fare or ticket, as the case may be, is exacted for travel on Grand River between the present northwesterly limits about one-half mile beyond the boulevard and the old limits near the boulevard, and that a like extra charge is made for travel on Jefferson avenue between St. Jean avenue and the Alter road. The fact as appears by the answer is that the company although asserting its right to exact an extra fare beyond the boulevard on Grand River is not doing so and that with a like reservation of its right is not exacting either an extra fare or extra tickets for travel on Jefferson between St. Jean avenue and the Alter road during workingmen's ticket hours, but that it does exact such fare for travel between those limits outside of workingmen's ticket hours.

The material facts are as follows:

The Grand River avenue and Jefferson avenue tracks are operated together, its cars reaching the one from the other now through Griswold street, formerly through Woodward avenue. This method of operation is adopted by the company for its own convenience and that of its patrons and not from any obligation imposed by the ordinances under which it operates, to which the attention of the Court has been called.

Its rights in Grand River avenue are derived as follows:

A. By ordinance of May 1, 1868, Section 2 (Exhibit A, Rec., p. 9): The city granted to the incorporators of the Grand River Street Railway Company the right to construct railroads on certain streets, among others through Grand River avenue to the intersection of the Michigan Southern Railroad (the city limits were at the railroad track). By Section 3 was given the right to build a second track within five years after one track was completed. By Section 6, the rate of fare for any distance was not to exceed 5 cents in any one car or on any one route named in the ordinance. By Section 8 the railway on Grand River was to be completed to the easterly line of the Woodbridge farm contemporaneously with the paving of the street, and from said farm line to the western city limits whenever public necessity as determined by the Common Council might require.

B. By ordinance of August 3, 1888 (D. U. R. Compilation, Vol. 1, page 32) there was granted (Section 1) the right to construct single tracks on Grand River from its present terminus to the westerly city limits; Section 2 providing that the extension should be completed before the street should be paved under the proceedings now before the Common Council and penalty of forfeiture.

The city limits had been extended from the railroad intersection to a point just beyond the boulevard by the Act of 1875 and 1885.

C. The ordinance of January 3, 1889 (Rec. 17, Exhibit B), by Section 1 granted, among other track rights, a double track railway through Grand River avenue from Woodward avenue to the city limits. This grant was made subject to the provisions of Chapter 100 of the Revised Ordinances of 1884, which is the grant of 1868 above referred to. Section 4 fixed the time of construction of the several lines authorized, the provision being that the lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance. By Section 3 the company is required to stipulate to carry for a five-cent fare from the westerly terminus of the Grand River avenue line to any point on Congress street east and vice versa; "Also for a continuous trip from any point on the line of said railway to any other point on the lines of said railway for a single fare of five cents for one continuous trip." And that it will sell tickets eight for a quarter, good over the entire route of the company, or any portion thereof, either way traveled continuously," when offered during what is popularly known as workingmen's hours.

The city limits at this time were just beyond the Boulevard, and tracks were built to that point under the authority of the last cited ordinance.

D. In 1897 the Township of Greenfield granted to Brownell and others (Rec., p. 38), the incorporators of the Grand River Electric Railway, a franchise for tracks along the Grand River road from the west line of Greenfield "to the present city limits of Detroit." Section 7 of this ordinance made the rate of fare five cents for any distance in Greenfield, or six tickets for a quarter, with school tickets at ten for thirty cents.

Under this franchise a street railroad was built throughout the Grand River road in the Township of Greenfield, connecting with the city limits, at the then city limits, near the Boulevard. The road was bonded for construction costs for \$850,000, which is still outstanding.

By legislative Act of 1905 and 1907 the city limits were further extended northwesterly on Grand River avenue about one-half mile, taking in territory previously a part of Greenfield. Long before this, however, the respondent had acquired by purchase from the Detroit & Northwestern Railway the Greenfield line, and also acquired by purchase from the Grand River Company, through various mesne conveyances, the city line upon Grand River.

The respondent's rights in Jefferson avenue are derived as follows:

A. By ordinance of November 24, 1862 (Exhibit 2, Rec. 42), there was granted to the incorporators of the Detroit City Railway the right to construct railways in certain streets, including Jefferson avenue (see Sec. 2). By Section 5 the routes of all railways granted were to commence in Woodward avenue, thence running on their several courses to the outer limits of the city. By Section 6 the time for the completion of the several lines was fixed, it being provided that the route through Jefferson avenue to the easterly limits, among others, should be completed within six months after March 31, 1863. Section 21 provided for a \$5,000 deposit as security for the completion of the lines which were to be constructed by October 1, 1863, the deposit to be forfeited on failure therein. By Section 8 the rate of fare for any distance was not to "exceed five cents on any one car, or any one route named in this ordinance." An examination of the whole ordinance clearly

shows Jefferson avenue was a route within this meaning of Section 8.

B. In 1873, Section 40 added to this ordinance, authorized the construction of a second track throughout Jefferson avenue.

C. By the ordinance of November 14, 1879 (Rec., 55), and Section 5 thereof, the rights and obligations created by the ordinance of 1862 were extended and limited to thirty years from this date.

D. By ordinance of January 3, 1889, supplementary to the ordinances of 1862 and 1879 (Exhibit 3, Rec. 58), there was granted to the Detroit City Railway rights upon certain streets, including (see Section 1) the right to extend its double track through Jefferson avenue from its present easterly terminus to the easterly limits of the city. By Section 2 it fixes the date for construction of the tracks authorized. It was provided that this double track should be constructed and in operation within six months from the date of the passage of this ordinance. Section 4 provides that the above mentioned additional lines shall be operated as a part of the present system of the Detroit City Railway, provided the company shall by written acceptance agree as follows:

(a) to carry passengers over other Detroit city lines to any point on the Fort street east line which covered Jefferson avenue tracks east of Mt. Elliott avenue for a single five-cent fare for one continuous trip.

(b and c) Similar provisions as regards other lines therein specified. Jefferson avenue is only affected in these provisions, a, b and c, through the fact that the Fort street east line created by this ordinance includes the Jefferson avenue tracks from Mt. Elliott east.

(d) Make arrangements for carriage of passengers within workmen's hours over any of its lines in said city for a single fare to be paid for by a ticket sold at

the rate of eight tickets for twenty-five cents, with transfer rights provided for paragraphs A, B and C.

At the time of the grant of 1862 the city limits on Jefferson avenue were at Mt. Elliott avenue. In 1885 they were extended to a point 200 feet east of Baldwin avenue, and were at this point when the ordinance of 1889 was passed.

(e) The limits were further extended in May, 1891, to Hurlbut avenue, being the eastern line of the Township of Hamtramck. The railroad on Jefferson avenue, in the territory covered by this extension, was constructed by the Hamtramck Street Railway Co., or by the Jefferson Avenue Railway (Rec., Exhibits 6 and 7, pp. 71 and 75), but these grants provided (Answer, p. 29) that the city fare should include transportation in the township, and vice versa. And these grants are not material to the present issue.

(F) The railroad from Hurlbut avenue easterly to the Country Club, in the Township of Grosse Pointe, was constructed under grant made by the Township and Village of Grosse Pointe and the Village of Fairview (Exhibits 8, 9 and 10, Rec. 78-87 and 81), either by the Jefferson Avenue Railway or by the Suburban Railway Co., its successor in title, and passed to the respondent by purchase before the Act of 1907, by which the territory from Hurlbut avenue east to a point near the Alter road, in the Village of Fairview, was annexed to the city.

These several village and township grants contain provision for an extra fare.

On October 26, 1909, the city claiming that the company's rights to operate over parts of Jefferson avenue west of Baldwin avenue would expire November 14, 1909, and that its rights in a number of other streets would expire at the same time, the Common Council

passed a resolution (Rec., 65) granting permission to continue operations after November 14, from day to day, "under the same terms and conditions except as to percentages on gross receipts now prevailing in the City of Detroit, whether due to contract agreement or not." This provision was accepted by a letter of the company's president (Rec., 69), stating that the company did not waive and that it conceded that the city did not waive any of its rights, but that the company would for the time being "continue to maintain and operate the lines in question under the terms and conditions under which the same are now maintained and operated." When this arrangement was made the company was and for a long time had been to the Common Council's knowledge (Rec., 28) collecting the fares complained of in this case. The Common Council were insisting the company were doing this in violation of the ordinance. The company had been convicted of such violation and the cause was pending in the Supreme Court and submitted February 7 following.

There can be no doubt that the respondent, by its purchase in accordance with the provisions of Section 15 of the Street Railroad Act of 1867, being Section 6448 of the Compiled Laws of 1897, of the lines constructed under the several grants of the Townships of Greenfield and Grosse Pointe and the Villages of Grosse Pointe and Fairview, acquired the right to collect the fares provided for in said grant, "In the same manner and upon the same terms" as the constructing companies might have done. The only question is whether the rights acquired under the Greenfield grant and the rights acquired under the Grosse Pointe grant to charge an extra fare outside the workingmen's ticket hours are obligated by the provisions of the two city ordinances of June 3, 1889, running to the companies to whose rights

the respondent has succeeded. The question turns on the construction of these ordinances and the terms of the arrangement made in the fall of 1909 for a continuance of operation by the defendant on payment of \$300 per day.

OPINION.

By the ordinance of 1862, by which the Detroit City Railway was granted its franchise, the city was divided into various routes. Detroit was a growing city. Between the years 1850 and 1860 it had more than doubled. The Common Council of that day must have anticipated the extension of the city and the need of a corresponding extension of the city street car lines. The language used with reference to the rate of fare is significant. The rate of fare for any distance shall not exceed five cents in any one case or on any one route named in this ordinance. So as the city grew the several additional grants necessary to extend the tracks along the various routes were given, but in each case in accordance with the spirit of the original plan, without increasing the fare. By the ordinance of January 3, 1889, the company was given power to extend the double track on Jefferson avenue to the easterly city limits, but no mention of the fare is made except as to the new Fort street line, which was permitted to use Jefferson avenue from Mt. Elliott avenue, in which case it was required to carry for a five cent fare. This left the one car, one route, one fare provision of the ordinance in force as to Jefferson avenue.

In the discussion of the workingmen's tickets provision of the last mentioned ordinance the Supreme Court, speaking by Mr. Justice Montgomery, said, construing the words "over any of its lines in said city for a single

fare" (162 M., p. 462). "There are two methods of extending street railways. One is by construction and the other may be by purchase under Section 6448, 2 Comp. Laws. The purchased railway becomes as much a part of the system as does the railroad as constructed. So we think it after all gets back to the question of whether the real intent of this ordinance was to provide for single fares within the city limits as such limits should from time to time be fixed.

We think it not unreasonable to hold that this mutual contract was made in view of the power of the Legislature of the State to increase or diminish the territory within the city, and that neither the city nor the company contemplated that in case of an extension of the lines of the company within the city, either by purchase or acquisition from another company, an increased fare should be demanded. The case of Township of West Bloomfield vs. Railway, 146 Mich., 198 (109 N. W. 258, 117 Am. St. Rec. 628) involved a question not entirely dissimilar. In that case the company had contracted that the fare from any point in said township to the City of Detroit, and vice versa, should not exceed the rate then charged by the company from Pontiac and Detroit, and vice versa. The company, while in competition with another line, maintained a fare of 25 cents. Subsequently purchased the competing line, and over the line passing through West Bloomfield increased the fare from Pontiac to Detroit to 35 cents. It was held that the language of the provision that the rate of fare from any point in the township to Detroit should at no time exceed the rate then charged from Pontiac to Detroit, and vice versa, referred to the company mentioned in the franchise, and it included any line which that company or its assignee might at any time build or purchase.

A case almost on all fours with the case at bar is that of *Indiana R. Co. vs. Hoffman*, 161 Ind., 593 (69 N. E., 399). Its reasoning is convincing, and we think the case should be followed. The case presented does not involve in this view an interference with any vested right of the company as assignee of the Fairview railway, but resolves itself simply into the question of the construction of the ordinance, and we construe the ordinance to include any street railway constructed or purchased by the defendant which shall be within the City of Detroit as the limits of said city may from time to time be fixed by the legislature."

On the rehearing of this case the court, speaking by Mr. Justice Stone, said: "It may be asserted as a general proposition, applicable here, that a municipal law or ordinance designed for a city at large operates throughout its actual boundaries, whatever they are, and is not affected by the fact that these are enlarged from time to time. The following authorities support the proposition that a municipal ordinance, regulation or contract designed for a city at large operates throughout its boundaries, whatever their change: *McQuillin on Municipal Ordinances*, Sec. 218; 1 *Dillon on Municipal Corporations* (4th ed.), Section 185, citing *St. Louis Gas Light Co. vs. City of St. Louis*, 46 Mo., 121; *Town of Toledo vs. Edens*, 59 Iowa, 352 (13 N. W. 313)."

There is the same reason for holding that the provisions of Section 8 of the first ordinance was not intended to apply to the then existing city limits, but was given a broad meaning to cover future extensions as additional territory might be brought into the city and additional grants given as for construing the words "city" to refer to "Detroit" as it might be thereafter, rather than as it existed on January 3d, 1889. This construction imposed no hardship on the company, having taken the franchise

of the Detroit City Railway, it took over its obligation. It was not compelled to extend its track either by purchase or by ordinance; the acquisition of the Grosse Pointe franchise was a purely voluntary act. If the original ordinance had specifically promised that on the enlargement of Detroit the company should waive its right in any franchise granted by surrounding townships and villages so far as the city limits there could have been no question but that the acceptance of the ordinance would have constituted a waiver and abrogated the franchises in city territory unless necessary for the security of lienors. If this is the manifest meaning of Section 8 the effect is the same. The fact that there may be underlying mortgages issued upon the faith of township and village grants is of no importance in the case at bar. Until there is a default the railway may manage its affairs as it will and until they are prejudiced the right of mortgagees need not be considered. Section 6448 of the Compiled Laws vest in the defendant the rights and privileges of its assignor, but in no way inhibits the parting with those rights or privileges or any portion thereof by contract. The obligation to carry on Grand River avenue without an extra fare is equally clear. There the language of the original ordinance is— for five cents for any one car or on any one route.

It is contended on behalf of the company that a fair construction of President Hutchins' letter authorizes the collection of a double fare, but we think this a forced construction and that it refers only to the rights given under ordinances.

It follows, therefore, that a peremptory mandamus must issue requiring a single fare to be accepted so long as any route, either on Grand River or Jefferson runs to the city limits.

JUDGMENT.

STATE OF MICHIGAN—IN THE CIRCUIT COURT FOR
THE COUNTY OF WAYNE.

THE CITY OF DETROIT,

Relator,

vs.

THE DETROIT UNITED RAILWAY,
Respondent.

No. 54,700.

At a session of said Court held in the court room in the City of Detroit on the 12th day of July, A. D. 1912.

Present, Honorable George S. Hosmer, Circuit Judge.

This cause was duly brought on to be heard before said court upon pleadings filed in said cause and after hearing arguments of counsel for the respective parties, it is ordered that said respondent, the Detroit United Railway, its officers and agents, do forthwith:

(1) Issue and sell tickets at the rate of eight tickets for twenty-five cents to be good for transportation over the entire Jefferson Avenue-Grand River route of said company, as described in said pleadings, or any portion thereof traveled continuously either way when offered for fare by persons taking passage on the cars of said respondent between the hours of 5:30 o'clock and 7:00 o'clock in the morning and between the hours of 5:15 and 6:15 o'clock in the afternoon, local time.

(2) That the said respondent, the Detroit United Railway, carry passengers taking passage within the territory upon Grand River avenue from the Boulevard to the northwesterly city limits and upon Jefferson avenue from St. Jean avenue to the easterly city limits to any point on its said Jefferson Avenue-Grand River

line in said city for a single fare of five cents at all hours of the day.

(3) That the respondent, the Detroit United Railway, carry passengers taking passage within the city of Detroit upon either Grand River avenue or Jefferson avenue to any point upon the line of its said railway on Grand River avenue and Jefferson avenue within the present limits of the city of Detroit for a single fare of five cents during all the hours of the day, and that this order be entered nunc pro tunc as of the 6th day of July, 1912, as a substitute for the orders herein on that day and on July 10th, 1912, entered.

(4) It is further ordered, that the relator recover its costs to be taxed.

GEO. S. HOSMER,
Circuit Judge.

STATE OF MICHIGAN—SUPREME COURT.

PETITION FOR CERTIORARI.

CITY OF DETROIT,	}
Relator and Appellee,	
vs.	
DETROIT UNITED RAILWAY,	
Respondent and Appellant.	}

To the Hon. The Chief Justice and Associate Justices
of said Court:

Your petitioner, the Detroit United Railway, respectfully shows unto the court that it is a street railway corporation organized and existing under the laws of the State of Michigan, and your petitioner further shows:

1. That heretofore, to-wit: on the thirtieth day of

January, 1912, the City of Detroit filed a petition for a writ of mandamus in the Circuit Court for the County of Wayne; that an order to show cause was issued on said petition; that on the 12th day of February, 1912, your petitioner filed its answer in said cause; that a copy of the petition of the said City and a copy of the answer of your petitioner as the respondent in said cause are hereto annexed as an appendix to this petition. The petition of the city is to be found on pages 1-21 and the answer of the respondent on pages 22-94.

2. That afterwards, to-wit: April 1, 1912, the case made by said petition and answer was heard before the Hon. George S. Hosmer, Circuit Judge, no issue of fact having been framed in the case. At said hearing the case was argued by the counsel for the parties and submitted to the court. A map in blue print used on the hearing is hereto annexed.

3. That afterwards, to-wit: on the 6th day of July, 1912, Judge Hosmer delivered an oral opinion which was stenographically reported and a copy of the same is hereto annexed as appendix number 2; that thereupon Judge Hosmer granted and caused to be entered an order of the court granting the writ of mandamus prayed by the city of Detroit.

4. That your petitioner has been advised and respectfully submits, that the decision so made by the Circuit Court for the County of Wayne is erroneous for the following reasons:

(1) That the court erred in holding that this case is not distinguishable from and is controlled by *People vs. Detroit United Railway*, 162 Mich., 460-463, it appearing that that case had reference only to the eight for a quarter tickets therein mentioned and had no application either directly or indirectly to the regular five cent fares and it further appearing that the ordinance fixing eight

for a quarter tickets during certain morning and evening hours made use of the words, "In said city."

(2) Extending the eight for a quarter ticket zone (during the morning and evening hours) into newly annexed territory, is an entirely different proposition than that of extending the five cent zone (during all of the other hours of the day) into newly annexed territory.

The one does not necessarily involve any disturbance of the contract between the city and the street railway company or an impairment of the contracts between the street railway company and the township and villages, a part of whose territory was annexed to the city.

Extending the five cent zone into the newly annexed territory cannot be sustained except on the theory that the whole city contract is substituted in the annexed territory for the township and village contracts, thereby depriving the inhabitants of the townships and villages of the benefit of the local contract under which the street railways were built within their territorial limits.

(3) The township of Greenfield, the township of Grosse Pointe and the Village of Grosse Pointe, are necessary parties to this case without which no mandamus should be issued.

(4) The legislature in passing the annexation acts here in question did not intend to modify, alter, amend or repeal any of the local grants or contracts made or entered into with street railway or other public service corporations.

(5) If said annexation acts are construed to modify or in any way affect the contract for five cent fares, then existing between the City of Detroit and the Detroit United Railway or are construed to modify or in any way affect the contracts then subsisting between the Detroit United Railway and the township of Greenfield and the township of Grosse Pointe and the Village of Grosse

Pointe then said acts of the legislature and each of them are in conflict with the provision of the constitution of the United States that no state shall pass any law impairing the obligation of contracts and is also in conflict with the provision of the fourteenth amendment of the constitution of the United States that no state shall deprive any person within its jurisdiction of life, liberty or property without due process of law.

(6) The order of the court granting the writ of mandamus is unjust against equity and illegal.

PRAYER.

Your petitioner prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the Circuit Court for the County of Wayne and that the order and judgment of said court in granting said writ of mandamus may be vacated and reversed and the petition of the city of Detroit dismissed.

DETROIT UNITED RAILWAY,
By BRENNAN, DONNELLY & VAN DE MARK,
Its Attorneys.

JOHN C. DONNELLY,
CHAS. D. JOSLYN,
HINTON E. SPALDING,
FRED A. BAKER,
JOHN J. SPEED,
Of Counsel.

STATE OF MICHIGAN, }
COUNTY OF WAYNE. } ss.

On this the 8th day of July, 1912, before me a notary public in and for said county personally appeared Fred

A. Baker and made oath that he is one of the counsel of the above named petitioner and has read the above and foregoing petition by him subscribed and knows the contents thereof and that the same is true of his own knowledge.

CHAS. THURMAN,

Notary Public, Wayne Co., Mich.

My commission expires Sept. 29, 1914.

The writ of certiorari was in the usual form of such writs, and the record returned is printed on the foregoing pages.

CALENDAR ENTRIES IN COURT BELOW.

1912.

Jan. 30 Petition for mandamus filed.

Feb. 24 Answer filed.

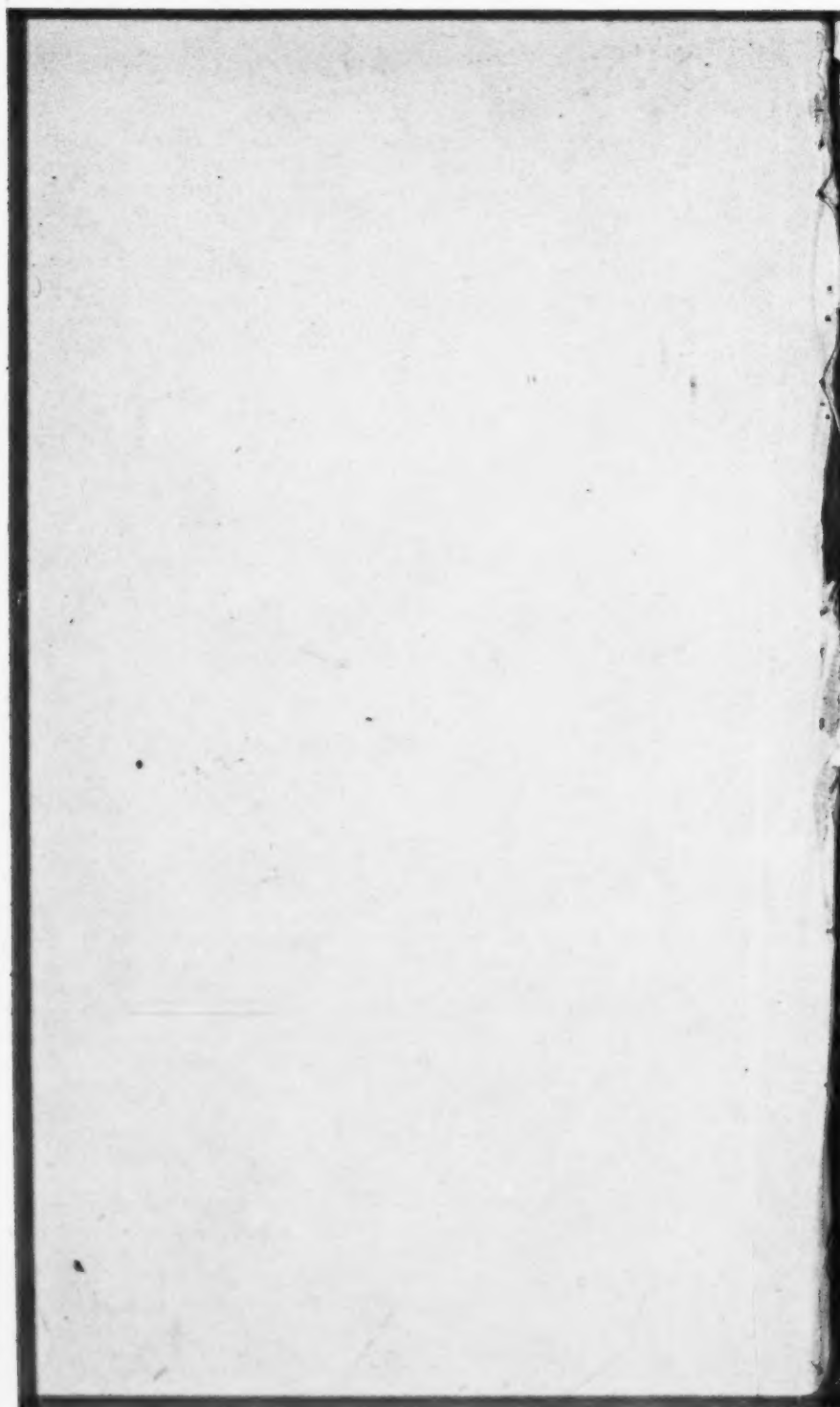
April 1 Hearing.

July 6 Order granting mandamus.

" 9 Opinion of court filed.

" 12 Order nunc pro tunc as of July 6, filed.

**BLUEPRINT
TOO
LARGE
FOR
FILMING**



At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room in the Capitol, in the City of Lansing, on the Fifteenth Day of October, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present:

The Honorable Joseph B. Moore, Chief Justice.

Joseph H. Steere, Aaron V. McAlvay, Flavius L. Brooke, Franz C. Kuhn, John W. Stone, Russell C. Ostrander, John E. Bird, Associate Justices.

CITY OF DETROIT

vs.

DETROIT UNITED RAILWAY.

This cause coming on to be heard is argued by Mr. Baker for relator and by Mr. Lawson for respondent and submitted.

STATE OF MICHIGAN,

Supreme Court:

CITY OF DETROIT, Relator,

vs.

DETROIT UNITED RAILWAY, Respondent.

Before Full Bench.

Opinion.

STEERE, J.:

This is a proceeding in certiorari, instituted to review the action of Wayne County Circuit Court in granting a writ of mandamus, at the instance of the city of Detroit, requiring the Detroit United Railway to carry passengers for a single five cent fare at all times of the day, and during workingmen's ticket hours for a single ticket, between the easterly limits of said city near the so-called Alter Road on Jefferson avenue, and the opposite northwesterly city limits on Grand River avenue, it being claimed by Relator that Respondent is obligated so to do under the provisions of certain ordinances.

The case was heard upon petition and answer and the material facts are practically undisputed.

A very clear and satisfactory statement of the case is found in the opinion of the trial judge which, supplemented by some additions from the briefs of counsel for Respondent, we follow closely.

Respondent's cars are operated between the points above mentioned connectedly, as a single line. The petition claims that extra fares or tickets are required of passengers when traveling on Grand River avenue between the present northwesterly city limits, which are about a mile beyond the city boulevard, and the old city limits which were near the boulevard, and that a like extra charge is made

for travel on Jefferson avenue between St. Jean avenue and said Alter Road.

It appears from Respondent's answer, and is undisputed, that, although asserting a right to exact fare beyond the city boulevard on Grand River avenue respondent does not do so; and that, still asserting its legal right to the extra fare, it is not collecting extra fares or extra tickets for travel on Jefferson avenue between St. Jean avenue and the Alter Road during workmen's ticket hours; but it admits that it does collect such fares for travel between those limits at other times.

The tracks of Respondent on Grand River and Jefferson avenues are connected and operated together, cars passing from one to the other through Griswold street; the route formerly having been through Woodward avenue, but later changed for the convenience of Respondent and its patrons, and not in compliance with any obligation imposed upon it by ordinance or contract.

Respondent is a corporation owning and controlling the electric railway lines in and adjacent to the city of Detroit having, as its name indicates, acquired and united into one organization various independent lines which had been incorporated and built from time to time under different franchises and operated independently throughout the city and its suburbs.

Respondent derives its right to operate in the city of Detroit through grants acquired from lines previously organized and subsequent ordinances and resolutions of the Common Council of the city as follows:

By an ordinance of May 1st, 1868, the city of Detroit granted to a corporation known as the Grand River Street Railway Company the right to construct a line on certain streets, including Grand River avenue, to the intersection of the Michigan Southern Railway, the tracks of which were near the city boundary; and by section 3 of said ordinance gave the right to build a second track within five years after the first track was completed. By section 6 of said ordinance "the rate of fare for any distance is not to exceed five cents in any one car or any one route named in this ordinance." By section 8 the line on Grand River avenue was to be completed to the easterly line of Woodbridge Farm contemporaneously with the paving of the street, and from said farm line to the west line of the city limits whenever public necessity, as it might be determined by the Common Council, should demand.

An ordinance dated August 3, 1888, granted to said company the right to construct a single track on Grand River avenue from its then present terminus to the westerly city limits. Section 2 of said ordinance required that such extension should be completed before the street should be paved, under proceedings then pending before the Common Council, in default whereof said right should be forfeited.

An ordinance dated January 3d, 1889, granted to said company the right to lay a double track through Grand River avenue from Woodward avenue to the city limits. This grant was made subject to the provisions of the grant of 1868 heretofore first mentioned.

Section 4 of the latter ordinance provided that "the lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance." Section 3 required said company to stipulate to carry passengers for a five cent fare from the westerly terminus of the Grand River avenue line to any point on Congress street east and vice versa; also from any point on the line of said railway to any other point, and to sell tickets at eight for a quarter good over the entire route of said company or any portion thereof, either way, within certain hours.

At the time of the adoption of this ordinance of 1889, the westerly city limits were located just beyond the city boulevard and the company extended its tracks to that point under said ordinance.

Beyond the city limits, and on either side of Grand River avenue extended (called the Grand River Road) lay the township of Greenfield. This township in 1897 gave a franchise to the Grand River Electric Railway for extension of a line across the township, along said road "to the present city limits of Detroit," fixing the rate of fare at five cents, or six tickets for a quarter, with school tickets at ten for thirty cents, for any distance within said township. This line was built accordingly, connecting at the city limits with the city line near the boulevard, the incorporators bonding the road for \$850,000. This amount is still outstanding.

By legislative acts of 1905 and 1907 the city limits were extended northwesterly on Grand River avenue, or road, for about one-half mile. Previous to this time respondent had become the owner of the city line on Grand River avenue in the city and also the connecting line extending through the township of Greenfield along the Grand River Road.

In November, 1862, the city by ordinance granted to a corporation known as the Detroit City Railway the right to construct lines on certain streets in said city, including Jefferson avenue. The routes of all such lines were to commence on Woodward avenue and run on their several courses to the city limits, the time for completing these various lines being fixed. The route along Jefferson avenue to the city limits was to be completed within six months after March 31, 1863. A deposit was required to be made as security for the completion of certain of the lines, to be forfeited on failure. It was also provided that the rate of fare should not exceed five cents on any car or on any route named in the ordinance. In 1873 a section added to this ordinance authorized the construction of a second track along Jefferson avenue. In 1879, by ordinance, the rights and obligations under the ordinance of 1862 and amendments thereof were "extended and limited to 30 years from this date." In 1889 a supplemental ordinance granted to the Detroit City Railway the right, among other things, to extend a double track along Jefferson avenue from its then easterly terminus to the easterly city limits, fixing the time within which the same should be constructed; it being also provided that the additional lines should be operated as a part of the existing system of the Detroit City Railways provided the company should agree in writing to carry passengers over certain lines to other

points on specified lines for a single five cent fare, and also to make arrangements for carrying passengers within specified hours over any of its lines within the city limits for a single fare, or on an eight-for-a-quarter ticket with specified transfer rights.

In 1862 the city limits of Detroit on Jefferson avenue were at Mt. Elliott avenue. In 1885 they were extended to a point 200 feet east of Baldwin avenue, and so continued until said ordinance of 1889 was enacted. In 1891 the limits were extended to Hurlburt avenue, which was the easterly line of the township of Hamtramck. Previous to this time a route had been constructed on Jefferson avenue in Hamtramck township by the Hamtramck Street Railway Company, or by the Jefferson Avenue Railway, under grants providing that the city fare should include transportation in the township and vice versa. From Hurlburt avenue easterly to the Country Club in the township of Grosse Pointe, a line was constructed under a grant made by the township, or village, of Grosse Pointe to the village of Fairview. This line was purchased by Respondent prior to an act passed in 1907, by which the territory from Hurlburt avenue east to a point near the Alter Road in the village of Fairview became a part of the city. These village and township grants contained provisions for an extra fare.

Prior to 1909 Respondent had absorbed the various lines organized and constructed under the foregoing franchises and ordinances, by purchase, in accordance with the provisions of section 6448 Comp. Laws of 1897, and acquired the rights conferred by such grants, including authority to collect fares "in the same manner and upon the same terms" as the original organizations.

A question having arisen between the city and Respondent as to the latter's franchise rights being about to expire on certain streets, including a portion of Jefferson avenue, the matter was temporarily adjusted by an arrangement under which the Common Council of the city passed a resolution on October 26, 1909, granting Respondent permission to continue operations after November 14, 1909, from day to day, "under the same terms and conditions, except as to percentages on gross receipts now provided in the city of Detroit whether due to contract agreement or not." The conditions of this resolution were accepted by the Respondent with the statement that it did not waive, and conceded that the city of Detroit did not waive any rights. At the time of this arrangement Respondent was collecting the fares in controversy in this cause.

The question presented for determination is whether or not, outside of workmen's ticket hours, the rights to charge extra fares acquired by Respondent under the Greenfield and Grosse Pointe grants were abrogated within existing city limits by the foregoing arrangement of 1909, construed with the original city ordinances of 1862 and 1868, fixing the rate of fare within the city limits, and the two city ordinances of 1889 relative to the Grand River Street Railway Company and the Detroit City Railway Company. Apparently the parties hereto do not disagree as to their respective rights relative to rates of fare inside of or beyond the city limits, had those limits

remained unchanged. The real contention arises over the effect of extending the city boundaries.

The subsequent agreement of 1909 was manifestly a temporary provision for a *modus operandi* from day to day, not intended as a final adjustment of any of their various differences, and gives little aid in the solution of this problem. By it Relator permitted Respondent, on payment of a certain *per diem*, to continue operations "under the same terms and conditions, except as to percentages on gross receipts, now prevailing, in the city of Detroit, whether due to contract agreement or not," and the proposition was accepted with the understanding, as declared by Respondent, that neither party waived any of its rights, whatever they might be.

Relator contends that one of its rights, reserved and imposed by the terms and conditions of the various ordinances, franchises and legislation heretofore referred to, gave to any passenger upon payment of a five cent fare the privilege of a continuous ride, within the city limits, from any point on the lines of Respondent's railway to any other point on any of said lines; that the combined provisions relating to continuous rides, in the various grants which Respondent had united, comprehended all territory within the limits of the city of Detroit, whenever and wherever located, and went with any extension of the municipal boundaries, or of Respondent's lines, within said boundaries.

Respondent contends that a proper construction of said grants restricts the five cent fare rate to the city limits, and lines constructed, as they existed when the grants were made; and urges that its position is strengthened by the arrangement of 1909, for the reason that Relator knew the railway company was then regularly collecting the fares now objected to and sanctioned the same as a part of the "prevailing terms and conditions" recognized and reserved by the agreement.

We are unable to adopt that view of the significance of the agreement. The word "prevailing" has no technical legal import. In the connection used it simply signifies that which is common, in operation or prevalent, while "terms" and "conditions" often used synonymously, when relating to legal rights are technical words of well-defined legal meaning. As used in contracts generally, they mean the propositions, limitations and exactions which comprise in whole or in part the agreement and govern the contracting parties, defining what they obligate themselves to do or not to do. As applied to a statute or ordinance giving a charter or franchise, they signify the boundary, limit or extent of the grant. *Railway Co. vs. Cincinnati*, 1 Ohio Prob. 269-278. The act, or fact that Respondent was collecting the disputed fares, when a *status quo* from day to day was agreed upon, could not be construed as a part of the "prevailing terms and conditions" mentioned in the agreement.

Counsel for Relator broadly contend that the effect of any change in a municipal boundary is no longer an open question in this State, but that it was put to rest by the decision of this court in *People vs. Detroit United Ry.* 162 Mich. 460.

Strong language of general application is there found. The direct

question in that case was whether the requirements of paragraph *d* section 4 of the ordinance of 1889, which ordinance is also here involved, compelling the Respondent to carry passengers during workingmen's ticket hours "over any of its lines in said city for a single fare" bound it to transport passengers to the easterly limits of Jefferson avenue, as extended subsequent to the adoption of said ordinance, notwithstanding the company was assignee of the earlier franchises granted by Grosse Pointe township and the village of Fairview. In the original opinion handed down in that case this court, speaking through Justice Montgomery, said:

"We think it not unreasonable to hold that this mutual contract was made in view of the power of the legislature of the State to increase or diminish the territory within the city, and that neither the city nor the company contemplated that in case of an extension of the lines of the company within the city, either by purchase or acquisition from another company, an increased fare should be demanded,"

—citing and reviewing *Township of Bloomfield vs. Ry.*, 146 Mich. 198; *Indiana Ry. Co. vs. Hoffman*, 161 Ind. 593. The opinion concluded as follows:

"We construe the ordinance to include any street railway constructed or purchased by the defendant which shall be within the city of Detroit as the limits of said city may from time to time be fixed by the legislature."

On a re-hearing granted in the case the court declined to modify or recede from those views, and in a supplemental opinion by Justice Stone said:

"A further investigation of the question involved satisfies us of the correctness of the reasoning and conclusion of Chief Justice Montgomery who wrote the former opinion in these cases (*ante*, 416), to which opinion reference is here made. He cited and followed the case of *Indiana Ry. Co. vs. Hoffman*, 161 Ind. 593, decided by the Supreme Court of Indiana. That case is well reasoned, and is supported by the authorities therein cited, and we think it should be followed in these cases. It may be asserted as a general proposition, applicable here, that a municipal law or ordinance designed for a city at large operates throughout its actual boundaries, whatever they are, and is not affected by the fact that these are enlarged from time to time,"

—concluding with approval of the rule that the terms of a franchise, or grant, by a municipality, shall be construed strictly as against the grantee and favorable as its terms permit to the grantor.

It is claimed in behalf of Respondent that this case is not controlling; that the language then under consideration, relative to the fares, was different from that now before us; that the general rule announced by the court was not necessary to a disposition of the issue and is largely dictum; that the court did not have before it section 2, of the ordinance, which limits the time for construction of tracks

authorized, indicating that the ordinance could not apply to tracks thereafter constructed, or, by extension of boundary, subsequently brought within the city limits; and that all the ordinances now before us, granting franchises on Jefferson and Grand River avenues, as well as other streets, required the lines to be built within a definite time, performance being insured by provisions for a bond or a forfeiture.

It is true that the case at bar and *People vs. Detroit United Ry.*, supra, have distinguishing features; and it is possible the latter case might have been disposed of on other and narrower grounds, but those which the court announced were pertinent, were not dictum, were directly in line with the points made and questions presented, and asked to be determined, by counsel for the respective parties, as appears by their briefs.

The then counsel for Respondent contended that "there is nothing in the street railway act nor in the contracts contained in the ordinances or grants mentioned from which it can be asserted that as often as the State should change the boundaries, the contracts would be correspondingly annihilated or altered, or the contracts of one municipality substituted, in whole or in part, for that of the other."

On the other hand counsel for the city contended that in making these contracts "it is to be presumed that the power of the legislature of the State was borne in mind, the power of increasing or diminishing territory from the given town, town or village; when, within that ordinance, the words "city limits" were used it was meant not only the city limits, as then established, but the city limits as they might be in the future."

Authorities in support of both contentions were cited in that case and are cited here. We think it can be said with certainty that, in a case where the question was pertinent and squarely presented in the briefs of counsel on both sides, argued and re-argued, this court, in harmony with *Indiana Ry. Co. vs. Hoffman*, supra, and the authorities there cited, now supported by the more recent case of *Peter-son vs. Tacoma Ry. & Power Co.* 60 Wash. 606, has unequivocally declared it a general rule in this State that city ordinances, designed for the city at large, operate throughout its boundaries, whatever changes may be made in them, and that grants by such ordinances, though accepted and amounting to contracts, are to be construed as made and accepted in contemplation of, and subject to, such rules, unless the contrary is clearly expressed.

It is further urged in behalf of Respondent that, conceding such general rule of construction, the contrary intent appears in this case from the language of the grants limiting the time of construction, together with the streets on which and points to where the lines might be built; referring specifically to city limits as they then existed, thus negating future extensions. Counsel say in their brief:

"It is contrary to all reason to believe that in 1862 or 1868, or 1889, the city of Detroit made a grant fixing the rate of fare in territory which did not become a part of the city until 1907. Such a grant by implication is contrary to the fundamental principles of the construction of municipal grants." Citing cases.

We think the language already quoted from *People vs. Detroit United Ry.*, 162 Mich., supra, intimates that some such belief might be entertained. Certain of the language used in the ordinances points to such a possibility and intimates an understanding that a growth of the city and development of its public utilities, to which the grants should apply, were anticipated.

In the original ordinance of 1862, to the Detroit City Railway, it was exclusively authorized to construct and operate lines "on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets, to Atwater street; and from Jefferson avenue at its intersection with Woodbridge street, to Third street; to the western limits of the city; and through such other streets and avenues in said city as may, from time to time, be fixed and determined by vote of the Common Council of the said city of Detroit, and assented to, in writing, by said corporation," provision was also made for connecting those various lines with Woodward avenue in such manner that each will furnish a continuous route through the heart of the city to and along Jefferson avenue. It was also provided that the railway down Gratiot street, or through Randolph Street, Monroe avenue and the Campus Martius may be continued as grantees may elect.

The ordinance of 1868 to the Grand River Street Railway company contemplated extension of lines on other streets than those named, double-tracking, etc., looking forward to development and expansion.

We do not regard the restrictions, in the ordinances, as to streets, city limits and time of construction as of controlling import. They do not negative the presumption that the parties contracted with the power of the legislature to change the city limits in view. The limit of time for completing the lines on certain streets was but a preliminary condition. The subsequent right and ability to operate the lines and collect fares only became absolute when the line was constructed and the preliminary condition forever disposed of, and then there was no time limit involved, except the life of the franchises.

It is unquestionably the law, as a general proposition, that in purchasing the Greenfield and Fairview lines Respondent acquired all rights originally granted by the franchises for such lines; and it is equally a general rule of law, that those rights, once granted and accepted, could not be destroyed or abridged by subsequent general or local legislation; but it does not follow that Respondent might not be in a position when those rights were purchased, by reason of other and previous contract obligations, so that as against certain parties and in certain localities, all those rights could not be enjoyed or enforced by it.

The rights of the townships, which granted franchises for the lines Respondent purchased, or of citizens of said township, or of the holders of underlying bonds, or the validity of the franchises, are not involved here. It is only a question of whether Respondent has, by contract with the city, obligated itself not to collect more than a five

cent fare in a certain zone where, were it not for such contract, it would be authorized so to do under said township franchises.

The court, in *People vs. Detroit United Ry.*, supra, said of the ordinance of 1887 as an entirety, that it should be construed as a mutual contract, made in view of and subject to the power of the legislature to change the city boundaries, the contracting parties being held to contemplate that an increased fare should not be demanded in case of an extension of the lines of the company within the city, either by purchase or acquisition from another company.

We do not think such construction is or should be limited to a single paragraph of the ordinance. It can with equal force be said of other parts of that ordinance, and of the others under consideration, that they are contracts to be construed as made in view of and contemplating expansion, and extension of application to territory which may by legislation be added to the city.

That contract and previous contracts, embodied in ordinances to which it is supplemental, define Respondent's right of existence in the city of Detroit. Its primary rights in the city territory are by city grant. It has united, built up and developed as an entirety a street railway system within the city, extending to and beyond its limits. It has absorbed by purchase and made a part of that system the township lines in question with their grants, and as a result of such unification and practical combination, even though in name and form it may retain the original corporate organization of the subsidiary companies, it has made them, as to the city and within the city, an integral part of the whole, and subjected them to the restrictions contracted for in the original city ordinances, thus defining and limiting its own rights under the township grants, within city territory, as subordinate to and domiciled by said city ordinances.

We are of opinion that the conclusions arrived at by the Court below are correct and its judgment is, therefore, affirmed.

J. S. STEERE.
FLAVIUS L. BROOKE.
J. W. STONE.
JNO. E. BIRD.
RUSSELL C. OSTRANDER.
FRANZ C. KUHN.
AARON V. McALVAY.
JOSEPH B. MOORE.

Endorsed: Filed December 17th, 1912. Chas. C. Hopkins, Clerk.

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room in the Capitol, in the City of Lansing, on the Seventeenth Day of December, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present:

The Honorable Joseph B. Moore, Chief Justice.

Joseph H. Steere, Aaron V. McAlvay, Flavius L. Brooke, Franz C. Kuhn, John W. Stone, Russell C. Ostrander, John E. Bird, Associate Justices.

No. 25260.

THE CITY OF DETROIT, Relator,
vs.

THE DETROIT UNITED RAILWAY, Respondent and Appellant.

The record and proceedings in this cause having been removed to this Court by Writ of Certiorari, issued to the Circuit Court for the County of Wayne, and the same and the matters and proceedings therein, having been seen and inspected and duly considered by the Court, and no error appearing therein; Therefore it is hereby ordered and adjudged that the order of said Circuit Court for the County of Wayne granting a peremptory Writ of Mandamus herein, be and the same is hereby in all things Affirmed, with costs to the said relator, to be taxed.

STATE OF MICHIGAN,
In the Supreme Court:

No. 25260.

THE CITY OF DETROIT, Relator,
vs.

DETROIT UNITED RAILWAY, Respondent and Appellant.

To the Hon. Joseph H. Steere, Chief Justice of the Supreme Court of the State of Michigan:

The petition of the Detroit United Railway respectfully shows:

That it is the respondent and appellant in the above entitled cause, which was commenced in the Circuit Court for the County of Wayne by petition for a Writ of Mandamus, filed by the City of Detroit against this respondent, in which Court and cause a judgment was rendered in favor of said relator and against this respondent; that said cause was removed to this Court by Writ of Certiorari which was caused to be issued by respondent, where said judgment of the Circuit Court for the County of Wayne was affirmed; that there were presented to said Circuit Court for the County of Wayne and to this Court, Federal questions, which were decided adversely to your petitioner, as follows:

(1) That so far as the Acts of June 16th, 1905 and June 19th, 1907, annexing a part of the township of Greenfield, purport to make operative any ordinance of the City of Detroit requiring the respondent to sell or accept the so-called workingmen's tickets on the cars of the respondent company within the territory so annexed, said Acts impair the obligation of the contract embodied in the said grant by the township of Greenfield to the predecessors in title of respondent, and in the grant by the City of Detroit to the predecessors in title of respondent, in violation of Section 10 of Article I of the Constitution of the United States and Section 43 of Article IV of the Constitution of the State of Michigan of 1850, and Section 9 of Article II of the Constitution of the State of Michigan of 1909, and deprives the respondent of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(2) That so far as the Act of October 24th, 1907, annexing the territory embraced within the limits of the Village of Fairview or part thereof, purports to make operative any ordinance of the City of Detroit requiring the respondent to sell or accept the so-called workingmen's tickets on the cars of the respondent within the territory so annexed, said Act impairs the obligation of the contract embodied in the said grant by the Village of Fairview to this respondent, and in the grant by the City of Detroit to the predecessors in title of this respondent, and its acceptance by this respondent, in violation of Section 10 of Article I of the Constitution of the United States, and Section 43 of Article IV of the Constitution of the State of Michigan of 1850, and Section 9 of Article II of the Constitution of the State of Michigan of 1909, and deprives respondent of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(3) That so far as the Acts aforesaid, annexing part of the Township of Greenfield, purport to require respondent to carry passengers taking passage upon Grand River Avenue at any point in the territory annexed from Greenfield Township to any point on its lines in said City of Detroit for a single fare, and to deprive this respondent of the right to collect an additional fare in the territory so annexed, said Acts impair the obligation of the contract embodied in the said grant by the Township of Greenfield to the predecessors in title of respondent, and in the grant by the City of Detroit to the predecessors in title of respondent, in violation of Section 10 of Article I of the Constitution of the United States, and Section 43 of Article IV of the Constitution of the State of Michigan of 1850, and Section 9 of Article II of the Constitution of the State of Michigan of 1909, and deprives the respondent of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(4) That so far as the Acts aforesaid, annexing part of the Village of Fairview, purports to require respondent to carry passengers taking passage upon Jefferson Avenue at any point in the territory annexed from the Village of Fairview, to any point on its lines in said City of Detroit, for a single fare, and to deprive this respondent of

the right to collect an additional fare in the territory so annexed, said Act impairs the obligation of the contract embodied in the said grant by the Village of Fairview to this respondent, and in the grant by the City of Detroit to this respondent's predecessor in title, and its acceptance by this respondent, in violation of Section 10 of Article I of the Constitution of the United States and Section 43 of Article IV of the Constitution of the State of Michigan of 1850, and Section 9 of Article II of the Constitution of the State of Michigan of 1909, and deprives respondent of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(5) That the various Acts annexing the territory within the Township of Greenfield and Village of Fairview to the City of Detroit should be so construed as not to impair the obligation of the contracts in relation to the rate of fare between the Township of Greenfield and predecessors in title of respondent and the Village of Fairview and the respondent, and the City of Detroit and this respondent's predecessor in title. The respondent herein claims the benefit of the provisions of Section 10 of Article I of the Constitution of the United States, and Section 43 of Article IV of the Constitution of the State of Michigan of 1850, and Section 9 of Article II of the Constitution of the State of Michigan of 1909 in respect to said contracts.

(6) That the effect given by the decision of the Supreme Court of the State of Michigan to certain statutes of the State of Michigan annexing territory to the City of Detroit, impairs the obligation of previous contracts which have been made between petitioner and the Village of Fairview, and between the predecessor in title of your petitioner and the Townships of Greenfield, Hamtramck and Grosse Pointe, and the Village of Grosse Pointe and the City of Detroit, respecting rates of fare to be charged for transportation of passengers under said several contracts, which have been duly assigned to your petitioner, in that said decision deprives said respondent of the right to collect the fare provided for in said several contracts.

(7) That the record shows that under authority conferred by the Street Railway Law, contracts were entered into between the Villages of Fairview and petitioner and between the Townships of Greenfield, Grosse Pointe and Hamtramck, and the Village of Grosse Pointe and the City of Detroit, with the predecessors in title of your petitioner, under which the said predecessors were authorized to operate a street railway within the limits of and through said municipalities, said contracts being Exhibits 1, 6, 7, 8, 9, and 10, A, B, 2 and 3, of record, and by said contracts with the township of Grosse Pointe and said Village of Fairview the company operating said line of railway was entitled to charge a rate of fare of five cents per passenger for a ride of any distance over any portion of said railway within said township and village and by said contract with the township of Greenfield the company operating said line of railway was entitled to charge a rate of fare of five cents per passenger or at the rate of six (6) tickets for twenty-five cents, for a ride of any distance over any portion of said railway within said township; and by said con-

tract of the City of Detroit the company operating said line of railway within said City of Detroit had a right to exact a fare for transporting passengers from any point within said city to the limits thereof, as they existed at the time said grant was made; that the grantees named in each of said contracts constructed and had in operation said lines of railway specified therein; that thereafter your petitioner acquired the same and all said contract rights under authority of Section 15 of the said Street Railway Law, together with the rights, privileges and franchises thereof and the right to use, maintain and operate said railways and to enjoy the rights, privileges and franchises thereof in the same manner and upon the same terms as the company from which it acquired it; that your petitioner entered upon the ownership and operation of said railways; that by virtue of the provisions of said Section 15 the rights possessed by petitioner's predecessors in title passed to and inured to the benefit of your petitioner; that thereafter the Legislature of Michigan, by statutes, annexed a portion of the territory in which said railways were constructed and operated to the City of Detroit, so that the same became a part of said City of Detroit and because of such annexation it was alleged and claimed by the City of Detroit that the respondent should carry passengers without extra charge in the annexed territory where passengers boarded respondent's cars at any point within the City of Detroit; and that respondent should carry passengers without extra charge to any point within the City of Detroit where passengers boarded respondent's cars and paid a fare in said annexed territory; that it was also alleged and claimed by the City of Detroit that within said annexed territory a rate of fare less in amount than that which had theretofore prevailed, should prevail upon the lines of railway constructed and put in operation under the several township and village grants above specified, during certain hours of the day, at which time a rate of fare of eight (8) tickets for twenty-five cents, it was alleged, was all that petitioner was entitled to charge; and the Supreme Court of the State of Michigan sustained each of said claims and held and gave to said Acts of annexation the effect of requiring petitioner to carry passengers within the annexed territory over said lines of railway for said lower rate of fare, and of requiring petitioner to carry passengers without any extra charge in said annexed territory where said passengers had paid a fare at any point within the City of Detroit, and of requiring said petitioner to carry passengers without any extra charge to any point within the City of Detroit where said passengers had paid a fare in said annexed territory.

Therefore your petitioner alleges that the said decision and judgment of the said Supreme Court is erroneous, in that under the effect given to the said Acts of annexation by its interpretation and construction thereof, said Acts impair the obligation of the several contracts and of each of them hereinbefore mentioned, and that it compels your petitioner to accept for transportation of passengers over the said line of railway a rate of fare much less than it has a right to receive for such transportation under the terms of said contracts, and that it compels your petitioner to transport passengers for

one fare where petitioner has, under said several contracts, the right to charge two fares, thereby and in that manner impairing the obligation of said contracts, in violation of Section 10 of Article I, of the Constitution of the United States and further because of the effect so given to the said Acts of annexation and the effect which the said Supreme Court held that it had upon the rights, privileges and franchises of petitioner with reference to the said railways in the matter of rates of fare and number of fares as hereinbefore set forth, the said Acts of annexation did deprive your petitioner of its property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

(8) That your petitioner has filed with the Clerk of this Court its assignments of error.

Wherefore your petitioner prays for an order allowing the issuing of a writ of error to remove said cause and the records therein to the Supreme Court of the United States for review and for a Citation directed to the City of Detroit, admonishing it to appear at the Supreme Court of the United States, pursuant to said writ of error.

DETROIT UNITED RAILWAY,
By HENRY L. LYSTER,
Its Attorney.

JOHN C. DONNELLY,
HENRY L. LYSTER,
Counsel for Petitioner

[Endorsed:] No. 25260. State of Michigan. In the Supreme Court. City of Detroit, Relator, vs. Detroit United Railway, Respondent and Appellant. Petition for Writ of Error from the United States Supreme Court. Brennan Donnelly and Van De Mark. Attorneys for Respondent and Appellant, 1702 Ford Building, Detroit, Michigan.

UNITED STATES OF AMERICA, ss:

To the City of Detroit, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Michigan wherein the Detroit United Railway is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph H. Steere Chief Justice of the Supreme Court of Michigan, this third day of January, in the year of our Lord one thousand nine hundred and thirteen.

J. H. STEERE,
Chief Justice of the Supreme Court of Michigan.

I accept service of this writ of citation.

RICHARD I. LAWSON,
Att'y for City of Detroit.

Jan. 4, 1913.

On this 4th day of January, in the year of our Lord one thousand nine hundred and thirteen, personally appeared Henry L. Lyster before me, the subscriber, a notary public in and for the county of Wayne State of Michigan and makes oath that he delivered a true copy of the within citation to Richard I. Lawson in his office in the City Hall at Detroit Michigan, said Lawson being the attorney of record for Defendant in Error in the Wayne Circuit Court and Supreme Court of Michigan.

HENRY L. LYSTER.

Sworn to and subscribed the 4th day of January, A. D. 1913.

[Seal Paul Broadley, Notary Public, Wayne County, Mich.]

PAUL BROADLEY,
Notary Public, Wayne Co., Mich.

My commission expires 9/30/13.

[Endorsed:] Filed Jan. 6, 1913. Chas. C. Hopkins, Clerk.

Copy.

Bond.

Know all men by these presents, That we, Detroit United Railway, a corporation organized under the laws of the State of Michigan, as principal, and the Fidelity and Deposit Company of Maryland, a corporation, organized under the Laws of the State of Maryland, as surety, we are held and firmly bound unto the City of Detroit, a municipal corporation, in the full sum of Five Hundred Dollars (\$500.00) to be paid to the said City of Detroit, to which payment, well and truly to be made, we bind ourselves, and our successors, jointly and severally firmly by these presents.

Sealed with our seals and dated this third day of January, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately, at the City of Lansing, the Supreme Court for the State of Michigan, in a suit pending in said Court between the City of Detroit, Defendant in Certiorari vs. Detroit United Railway, Respondent and plaintiff in Certiorari, a judgment was rendered against the said Detroit United Railway, and the said Detroit United Railway having obtained a Writ of Error to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Supreme Court of Michigan to reverse the judgment in the aforesaid suit, and a citation, directed to the said City of Detroit, citing and admonishing it to be and appear at the Supreme Court

of the United States at Washington within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Detroit United Railway shall prosecute such Writ of Error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

DETROIT UNITED RAILWAY,

By A. E. PETERS, *Secretary*.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND,

By HENRY L. LYSTER, *Attorney in Fact*.
CHAS. WHITAKER, *Agent*.

Approved:

J. H. STEERE,

*Chief Justice of the Supreme Court
of the State of Michigan.*

(Endorsed:) Filed January 3, 1913 Chas. C. Hopkins, Clerk
Supreme Court.

STATE OF MICHIGAN:

Supreme Court.

DETROIT UNITED RAILWAY, Plaintiff in Error,

vs.

CITY OF DETROIT, Defendant in Error.

Assignments of Error.

The Detroit United Railway, plaintiff in error, in connection with the petition for Writ of Error herein makes the following assignments of error, which said Detroit United Railway avers occurred in the final order and judgment herein:

1. That the Supreme Court of the State of Michigan erred in deciding that the Act of the Legislature of the State of Michigan, which took effect October 24th, 1907, annexing certain territory in the Township of Grosse Pointe and the Village of Fairview to the City of Detroit, had the effect to deprive said plaintiff in error of the right and franchise which it had theretofore possessed under the grant made to it by the Village of Fairview, and under the grant made to its predecessor in title by the Township of Grosse Pointe, to charge a rate of fare of five cents per passenger for a ride over any part of its railway for any distance within the territory so annexed to the City of Detroit. Said decision gives to said Annexation Act an effect which impairs the obligations of the contract of plaintiff in error contained in the aforesaid grants, contrary to Section Ten, Article I of the Constitution of the United States, and deprives it of

its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

2. That said Supreme Court of the State of Michigan erred in deciding that the Acts of the Legislature of the State of Michigan, which took effect June 16th, 1905 and June 19th 1907, annexing certain territory in the Township of Greenfield to the City of Detroit, had the effect to deprive plaintiff in error of the right and franchise which it had theretofore possessed under the grant made to its predecessor in title by the Township of Greenfield, as set forth in the record in said cause, to charge a rate of fare of five cents per passenger, or exact a ticket sold at the rate of six for twenty-five cents, for a ride over any part of its railway for any distance within the territory so annexed to the City of Detroit. Said decision gives to said Annexation Act an effect which impairs the obligation of the contract of plaintiff in error contained in the aforesaid grants, contrary to Section 10, Article I of the Constitution of the United States, and deprives it of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

3. Said Supreme Court of the State of Michigan erred in deciding that the Act of Annexation referred to in the first above assignment of error had the effect of depriving said plaintiff in error of the right which it had theretofore possessed under grants from the City of Detroit set forth in the record in this cause, to charge a fare of five cents, except during workingmen's hours from five thirty A. M. to seven A. M., and five fifteen P. M. to six fifteen P. M., and during those hours to exact a ticket sold at the rate of eight for twenty-five cents, for transporting a passenger from any point within the City of Detroit to the limits as they existed before said territory was annexed, and in giving to said Act of Annexation said effect the obligation of the contract of plaintiff in error is impaired, contrary to the terms of Section 10, Article I of the Constitution of the United States, and plaintiff in error is deprived of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

4. Said Supreme Court of the State of Michigan erred in deciding that the Acts of Annexation referred to in the second assignment of error had the effect of depriving plaintiff in error of the right which it had theretofore possessed under grants from the City of Detroit set forth in the record in this cause, to charge a fare of five cents, except during workingmen's hours from five thirty A. M. to seven A. M., and five fifteen P. M. to six fifteen P. M., and during those hours to exact a ticket sold at the rate of eight for twenty-five cents, for transporting a passenger from any point within the City of Detroit to the limits as they existed before said territory was annexed, and in giving to said Acts of Annexation said effect the obligation of the contract of plaintiff in error is impaired, contrary to the terms of section Ten, Article one of the Constitution of the United States, and plaintiff in error is deprived of its property without due process

of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

(5) The Supreme Court of the State of Michigan erred in deciding that under the contract made with the City of Detroit by said predecessor in title of plaintiff in error, plaintiff in error was under an obligation to carry, under the terms of and at the rates of fare specified in that contract, passengers to and from the limits of the City of Detroit, as those limits were thereafter by law extended, notwithstanding the fact that the lines of railway in the annexed territory were constructed and operated under grants which authorized the charge of another and higher rate of fare. In so deciding, the Supreme Court erred in giving to the Acts of Annexation the effect of impairing the obligation of the contracts of the plaintiff in error, contained in the aforesaid grants and in the grants from the City of Detroit heretofore described in Assignments 3 and 4, contrary to Section 10 Article I of the Constitution of the United States; and in so holding, the Supreme Court of the State of Michigan gave to said Acts of Annexation the effect of depriving plaintiff in error of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

(6) The Supreme Court of the State of Michigan erred in affirming the judgment of the Circuit Court for the County of Wayne and State of Michigan.

(7) The Supreme Court of Michigan erred in deciding that plaintiff in error was bound to carry a passenger upon its lines in the hereinbefore described territory annexed to the City of Detroit during the hereinbefore described workingmen's hours on receipt of a ticket sold at the rate of eight for twenty-five cents, though the grants under which said lines of railway were constructed and operated authorized the charge of five cents or in the case of the lines built in the territory annexed from the Township of Greenfield of a ticket sold at the rate of six for twenty-five cents. In so deciding, the Supreme Court of Michigan erred in giving to the Acts annexing said territory the effect of impairing the obligations of the contracts of plaintiff contained in the above mentioned grants and in its hereinbefore described grants from the City of Detroit contrary to Section 10, Article I of the Constitution of the United States and of depriving it of its property contrary to the Fourteenth Amendment of the Constitution of the United States.

8. The Supreme Court of the State of Michigan erred in deciding that all persons taking passage on cars of plaintiff in error in the territory annexed to the City of Detroit from the Village of Fairview, as well as in the territory annexed to said City of Detroit from the Township of Greenfield, were entitled to ride to any point on the lines of railway of plaintiff in error in the City of Detroit without extra fare. In so deciding the Supreme Court of the State of Michigan erred in giving to the legislative acts annexing said territory an effect which impaired the obligations of the contracts of plaintiff in error contained in its hereinbefore described grants from the City of Detroit and in its hereinbefore described grants from the munic-

ipalities formerly having control of said annexed territory, contrary to Section 10, Article I of the Constitution of the United States, and in so holding said Supreme Court of the State of Michigan deprived said plaintiff in error of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

9. Said Supreme Court of the State of Michigan erred in deciding that any person taking passage on cars of plaintiff in error at any point within the City of Detroit had the right to be carried by said plaintiff in error upon and across the territory annexed to the City of Detroit from the Township of Greenfield, and upon and across the territory annexed from the Village of Fairview without paying an extra fare. In so deciding, the Supreme Court of the State of Michigan erred in giving an effect to the acts annexing said territory which impaired the obligation of the contract of the plaintiff in error contained in the hereinbefore described grants from the City of Detroit and in its hereinbefore described grants from the municipalities formerly having control of said annexed territory, contrary to Section 10, Article I of the Constitution of the United States; and in so deciding said Supreme Court gave to said acts of annexation the effect of depriving plaintiff in error of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

10. The Supreme Court of the State of Michigan erred in holding that the acts of annexation as construed by said Supreme Court did not impair the obligation of the contracts of plaintiff in error or of any of said contracts, and did not deprive plaintiff in error of its property without due process of law.

11. The Supreme Court of the State of Michigan erred in entering a judgment which gives to the hereinbefore described Acts annexing territory to the City of Detroit the effect of impairing the obligations of the contracts of the plaintiff in error with said City of Detroit and with the municipalities formerly having control of said annexed territory contrary to Section 10, Article I of the Constitution of the United States.

12. The Supreme Court of the State of Michigan erred in entering a judgment which gives to the hereinbefore described acts annexing territory to the City of Detroit the effect of depriving plaintiff in error of its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

Therefore, said plaintiff in error prays that the judgment and decision of the said Supreme Court of the State of Michigan may be reversed, and that said Supreme Court may be directed to enter an order reversing the judgment of the Circuit Court for the County of Wayne in said cause.

JOHN C. DONNELLY,
WILLIAM L. CARPENTER,
HENRY L. LYSTER,

Counsel for Plaintiff in Error.

[Endorsed:] Supreme Court, State of Michigan. Detroit United Railway, Pl'tf in Error, vs. City of Detroit, Def't in Error. Assignment of Errors. Filed Jan. 3, 1913. Chas. C. Hopkins, Clerk. John C. Donnelly, Wm. L. Carpenter, Henry L. Lyster, Counsel for Pl'tf in Error, Detroit, Mich.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Michigan before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between The City of Detroit and The Detroit United Railway wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The Detroit United Railway as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to laws and customs of the United States, should be done

Witness the Honorable Edward D. White, Chief Justice of the United States Supreme Court, the 3rd day of January in the year of our Lord, one thousand nine hundred and thirteen.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELMER W. VOORHEIS,
Clerk U. S. District Court for the
Eastern District of Mich.

Allowed by

J. H. STEERE,

Chief Justice of the Supreme Court
of the State of Michigan.

[Endorsed:] Writ of Error.

Supreme Court of the State of Michigan.

DETROIT UNITED RAILWAY, Respondent and Plaintiff in Error,
vs.
CITY OF DETROIT, Relator and Defendant in Error.

IN THE SUPREME COURT, ss:

I, Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the Record, and of all proceedings had and determined in the above entitled cause by said Supreme Court, including the written decision and reasons therefor, signed by the Judges of said Court, and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original and it is a true transcript therefrom and of the whole thereof; that attached thereto are the petition for the Writ of Error; the Writ of Error with allowance endorsed thereon, the Citation with acceptance of service endorsed thereon by the Attorney for the adverse party, a copy of the bond duly approved, together with the assignments of error signed by attorneys for plaintiff in error.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at the City of Lansing, this eighth day of January in the year of our Lord one thousand nine hundred and thirteen.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk of the Supreme Court of Michigan.

Endorsed on cover: File No. 23,496. Michigan Supreme Court. Term No. 921. The Detroit United Railway, plaintiff in error, vs. The City of Detroit. Filed January 11, 1913. File No. 23,496.

Office of the Court, U. S.

FILED

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JAMES D. MAHER

CLERK

Supreme Court of the United States

DETROIT UNITED RAILWAY,
Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF
MICHIGAN,
Defendant in Error.

DETROIT UNITED RAILWAY,
Plaintiff in Error,

vs.

THE CITY OF DETROIT,
Defendant in Error.

October Term, 1913.

No. 



1

October Term, 1913.

No. 



4

In Error to the Supreme Court of the State of Michigan.
(Files Nos. 22377 and 23496.)

BRIEF FOR PLAINTIFF IN ERROR.

JOHN C. DONNELLY,
WILLIAM L. CARPENTER,
Counsel for Plaintiff in Error.

DETROIT:
CONWAY BRIEF CO., 142-150 LAFAYETTE BOULEVARD
1914



INDEX.

	PAGE.
Statement of Case.....	1-6
Ground upon which judgments under review rest..	6-8
Specifications of Errors Relied Upon.....	8, 9
Argument	9-27
That contracts fixing fares entitles plaintiff in error to exact that fare.....	10
That contracts relied upon fixed fares only on railways authorized to be constructed by City	11-14
That City never authorized construction of railways in annexed territory.....	14-25
That even if contracts relied upon do fix fares on railways not constructed under City grants, they do not fix the fares upon which passengers shall be carried by a plaintiff in error in the annexed territory.....	25
That even if the grants from Detroit did author- ize the construction of railways in the an- nexed territory, they did not authorize their construction under the circumstances exist- ing in this case.....	26-27

LIST OF CASES REFERRED TO.

	PAGE.
Binghamton Bridge, In Re, 3 Wall, 51.....	20
Blair v. Chicago, 201 U. S., 462.....	20, 21
Charles River Bridge v. Warren Bridge, 11 Pet., 420	20, 22, 23
Detroit v. Detroit Citizens' St. Ry. Co., 184 U. S., 368	7, 10
Detroit Citizens' St. Ry. v. City of Detroit, 110 Mich., 384	18, 19
Detroit Citizens' St. Ry. v. Detroit Ry., 171 U. S., 48	19
Detroit United Ry. v. Detroit, decided May 26, 1913, 33 Sup. Ch. Rep., 697.....	20
Indiana R. R. Co. v. Hoffman, 161 Ind., 593.....	24, 25
Lewis v. Detroit Board of Education, 139 Mich., 309	20
Patterson v. Tacoma Ry., 60 Wash., 406.....	24, 25
People v. Detroit & Howell Plank Road Co., 37 Mich., 195	24
Providence Bank v. Billings, 4 Pet., 514.....	22
Toronto Corporation v. Toronto Ry., App. Cas., H. L., Eng. & Scotch L. R., 1907, p. 315; s. c., 37 Canada Sup. Ct. Rep., 430.....	23, 24
Turner's Falls Fire Dist. v. Miller's Falls Water Supply Dist., 189 Mass., 262.....	24

Supreme Court of the United States

DETROIT UNITED RAILWAY,
Plaintiff in Error,

vs.

**THE PEOPLE OF THE STATE OF
MICHIGAN,**

Defendant in Error.

October Term, 1918.
No. 16.

DETROIT UNITED RAILWAY,
Plaintiff in Error,

vs.

THE CITY OF DETROIT,
Defendant in Error.

October Term, 1918.
No. 421.

In Error to the Supreme Court of the State of Michigan.
(Files Nos. 22877 and 23496.)

BRIEF FOR PLAINTIFF IN ERROR.

(All references to the Record, except when otherwise stated,
are to the Record in the second case.)

Statement of Case.

The Legislature of the State of Michigan, by a law which took effect June 16, 1905, extended the limits of the City of Detroit northwesterly along Grand River Avenue by annexing to said city, from the township of Greenfield, a strip of land 1100 feet wide. Later, said Legislature, by a law which took effect June 19, 1907, further extended the limits of said city along Grand River Avenue by annexing thereto from said Township of Greenfield a strip of

land 1810 feet wide, making the total extension to the city limits on said Grand River Avenue 2910 feet (Rec. 3). By another law, which took effect October 24, 1907, the Legislature extended the limits of the City of Detroit easterly along Jefferson Avenue by annexing thereto, from the Township of Grosse Pointe and the Village of Fairview, a strip of land 3566 feet long (Mich Laws Extra Session, 1907, pp. 56-58, Map Rec., 112).

When these laws took effect, plaintiff in error owned and operated all the street railways in the City of Detroit, and all the interurban railways entering said city. Among said street railways was a line on Jefferson Avenue extending from the heart of the city to, through and beyond the above described territory, annexed to the city from the Township of Grosse Pointe and the Village of Fairview; and a line on Grand River Avenue which likewise extended from the heart of the city to, through and beyond the above described territory annexed to the city from the Township of Greenfield.

The street railways in said annexed territory were constructed before annexation under grants from the municipalities of which said annexed territory was formerly a part. There are three of these grants—one for the Street Railway in the territory annexed from the Township of Greenfield, granted by the Township Board of that township November 1, 1897, to predecessors in title of the plaintiff in error (Rec., 38-41); one for the Railway in the territory annexed from the Township of Grosse Pointe and the Village of Fairview, granted by the Township Board of Grosse Pointe April 8, 1891, to the predecessors in title of the plaintiff in error (Rec., pp. 87-90); and the other—also for the Railway in the territory annexed from the Village of Fairview—granted May 16, 1905, by the Village of Fairview to the plaintiff in error. (Rec., pp. 91-94.)

(The explanation of the overlapping of the last two grants above described is this: The Village of Fairview came into existence by Act 501 of the Local Acts of the Legislature for the year 1903. After that the village authorities had control of the territory formerly controlled by the authorities of the Township of Grosse Pointe. For reasons unnecessary to state, the village authorities made a new grant, as above stated.)

Each of these grants ran for thirty years and gave to the grantee and to plaintiff in error, as its successor, the right to exact a fare of five cents—or, in the case of the grant made by the Township of Greenfield (Rec., 40) a ticket sold at the rate of six for twenty-five cents—for carrying passengers between points in said annexed territory and the old city limits of Detroit, and each of these grants imposed upon the grantee and upon the plaintiff in error, as its successor, the duty of carrying for said fares and between said points all persons who took passage within the limits of the granting municipality.

The street railways within the old limits of the City of Detroit were constructed and operated under grants from the city made to predecessors in title of plaintiff in error. (To be precise, a small part of the Jefferson Avenue line, in territory which was annexed to the City in 1891, was constructed and operated under grant from the Township of Hamtramck. (Rec., 75.) This, however, is a circumstance of no importance.)

These grants from the City of Detroit gave to the grantee therein and to the plaintiff in error, as its successor, the right to exact a fare of five cents, except during workingmen's hours (from 5.30 A. M. to 7.00 A. M., and from 5.15 to 6.15 P. M.) and during those hours to exact a ticket, sold at the rate of eight for twenty-five cents, for transporting a passenger between any points within the old city limits.

Defendant in error thinks it a material circumstance—though plaintiff in error does not—that at the time of said annexations (see Rec., pp. 3 and 25) cars were operated on Grand River Avenue and Jefferson Avenue as one route from a point beyond the new easterly city limits on Jefferson Avenue to a point beyond the new northwesterly limits on Grand River Avenue, though fares beyond the old limits were collected under and in accordance with grants from the outside municipalities.

Plaintiff in error and all the companies who built lines outside of Detroit are organized under an act for the formation of street railway companies, Chapter 168 of the Compiled Laws of 1897 (Rec., 35). Section 13 (Sec. 6446, Mich. Comp. Laws) of that chapter authorizes corporations organized thereunder

"with the consent of the corporate authorities of any city or village given in and by an ordinance" to "construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent," * * * "and extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village, upon such terms and conditions as may be agreed upon by the Company and the Township Board of the Township." * * * Also, to "construct, use, maintain and own a street railway for the transportation of passengers in and along the streets and highways of any township upon such terms and conditions as may be agreed upon by the Company and the Township Board of the Township."

Section 15 of said chapter (Sec. 6448 Mich. Comp. Laws) authorizes any such street railway company to

"purchase and acquire, either at public or private sale, whether judicial or otherwise * * * any street railway in any city, village or township owned by any other corporation or company, together with all real and personal estate belonging thereto, and the rights, privileges and franchises thereof," and to "use, maintain and complete such road and * * * use and enjoy the rights, privileges and franchises of such company the same, and upon the same terms, as the company whose road and franchises were so acquired might have done."

It is by virtue of the authority given in these sections that plaintiff in error acquired and operated its railways in the City of Detroit and the adjoining villages and townships.

There are two judgments of the Supreme Court of Michigan under review in this consolidated case. One of those judgments—that in No. 16 of the October term of 1913—affirmed a conviction of plaintiff in error in the Recorder's Court of the City of Detroit upon a complaint that, on the seventh of November, 1907, in the territory annexed from the Village of Fairview

"it did * * * unlawfully and wilfully fail and neglect * * * to sell * * * tickets at the rate

of eight tickets for twenty-five cents, each ticket to be good for transportation within the city limits between the hours of 5.30 and 7.00 A. M. and 5.15 and 6.15 P. M" (Rec., No. 16, p. 3).

The other judgment—that in Record No. 421 of the October term, 1913—is an affirmance of the order of the Circuit Court for the County of Wayne granting a peremptory writ of mandamus (Rec., 122) ordering plaintiff in error (Rec., 106) to

"issue and sell tickets at the rate of eight tickets for twenty-five cents, to be good for transportation over the entire Jefferson Avenue-Grand River route of said Company, as described in said pleadings, or any portions thereof (this means anywhere within the new city limits) traveled continuously either way, when offered for fare by persons taking passage on the cars of said plaintiff in error continuously between the hours of 5.30 o'clock and 7 o'clock in the morning and between the hours of 5.15 and 6.15 o'clock in the afternoon."

Said mandamus also ordered plaintiff in error to carry passengers taking passage in the annexed territory upon Grand River Avenue and upon Jefferson Avenue to any point on its said Jefferson Avenue-Grand River line in said city for a single fare of five cents at all hours of the day, and to carry passengers taking passage within the city upon either Grand River or Jefferson Avenue to any point upon its line of railway on Grand River Avenue or Jefferson Avenue within the present limits of the city for a single fare of five cents during all hours of the day.

It will be seen that these judgments compel plaintiff in error to carry all persons between any two points on the Jefferson Avenue-Grand River line within the new city limits, including the annexed territory, on payment of the fare previously obtaining for carriage between points within the old city limits.

Said judgments deprive plaintiff in error of the rights it formerly had—which rights it claims still exist—(a) of exacting a fare for carrying passengers from any point within the city to the old city limits; (b) of exacting a fare for carrying persons who take passage in the said annexed territory to said old city limits; and (c) it compels plaintiff in error during certain hours of the day to carry

passengers in the annexed territory on receipt of a ticket sold at the rate of eight for twenty-five cents, as required by the ordinance of Detroit, whereas it was entitled to receive five cents (or in Greenfield territory a ticket sold at six for twenty-five cents).

Ground Upon Which Judgments Under Review Rest.

The judgments to be reviewed rest upon the ground that the predecessors in title of plaintiff in error, at the time they obtained grants from the City of Detroit, under which certain railways within the old city limits were constructed, entered into contracts with the City whereby plaintiff in error, as the assignee of said grants, became obligated to carry passengers in the afterwards annexed territory and from any point in the annexed territory to any point in the City of Detroit, and from any point in the City of Detroit to any point in the annexed territory, at the rates of fare specified in the grants.

Three of these grants demand the attention of the Court:

(a) The grant of the City of Detroit to the Detroit City Railway (organized under the Tram Railway Act, the purposes of which are similar to those of the Street Railway Act hereinbefore set forth) made November 22, 1862, the same being Exhibit 2 attached to the answer and found in the Record, pp. 42-57.

This grant contains the contract which has always been, and still is, in force, and the only contract with the City (except a contract as to workingmen's hours hereinafter mentioned) fixing fares on Jefferson Avenue. That contract is in these words (Rec., 46):

"The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance."

The routes named in the ordinance—and it names several routes (Sec. 5, Rec., 45):

"commence in the Woodward Avenue road at Campus Martius, from thence running on their several courses to the outer limits of the city."

(b) The grant of January 3, 1889, from the City of Detroit to the Grand River Railway Company (also organized under the Tram Railway Act), authorizing the construction of a railroad from Woodward Avenue to the city limits, the same being Exhibit "B" attached to the bill of complaint and found in the Record, pp. 17-19.

This grant contains the only contract with the city in force at the time of annexation fixing fares on Grand River Avenue. By that contract (Rec., 18) the grantee agrees

"to carry passengers * * * for a single fare of five cents for one continuous trip * * * from any point on the line of said railway to any other point on the lines of said railway,"

except during workingmen's hours, and during those hours to carry passengers "over" (its) "entire route or any portion thereof" for a ticket sold at the rate of eight for twenty-five cents.

(c) The grant of January 3, 1889, to the Detroit City Railway, the same being Exhibit 3 attached to the answer of plaintiff in error. (Rec., pp. 58-64.)

This grant contains the only contract with the City fixing fares on Jefferson Avenue during workingmen's hours. By that contract (Rec., 63) the grantee agreed to "carry such passengers as shall have taken passage on the cars" during workingmen's hours "over any of its lines in said city" (at that time the grantee had, as shown by the Record in this case, many lines in the city) "for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents for one continuous trip."

Each of these contract fixing fares is merely a provision in an ordinance granting to a predecessor in title of plaintiff in error the right to construct and operate a street railway. Those provisions were inserted in the ordinance by virtue of the statute (see Mich Comp. Laws 1897, Chap. 167, Sec. 6425 which gave to corporations organized thereunder the right to construct and operate street railways within the limits of municipalities "under such regulations and upon such terms and conditions" as the municipal authorities may prescribe.

See

Detroit v. Detroit Citizens' St. Ry. Co., 184 U. S., 368-383.

There are other provisions in these ordinances and provisions of other ordinances which should be considered in determining the issue. It is thought, however, that a reference to them can best be made in connection with and as a part of the argument.

Specifications of Errors Relied Upon.

Plaintiff in error claims:

(1) That the Supreme Court of the State of Michigan erred in deciding that the several acts of the Legislature of the State of Michigan, heretofore referred to, annexing territory to the City of Detroit had the effect of depriving said plaintiff in error of the right which it theretofore possessed under the grants from the municipalities of which said annexed territory was formerly a part to charge and receive the rate of fare specified in said grants for transporting passengers from any point in said annexed territory to the old limits of the City of Detroit, and in deciding that said acts of the Legislature of the State of Michigan deprived said plaintiff in error of the right which it had theretofore possessed to charge and receive the fare specified in the grants from the City of Detroit for transporting passengers from any point in the City of Detroit to the limits as they existed before said territory was annexed. Said decision gives to said annexation acts an effect which impairs the obligations of the contracts of plaintiff in error contained in the aforesaid grants, contrary to Section 10, Article I. of the Constitution of the United States, and deprives it of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

See

Assignments of Error, 1, 2, 3, 4, 8, 9, 10, 11 and 12 (Rec., 128-131).

(2) That the Supreme Court of the State of Michigan erred in deciding that the predecessors in title and assignors of plaintiff in error entered into a contract or contracts with the City of Detroit fixing the rate of fare upon which plaintiff in error must carry passengers upon its railways in said annexed territory and between points in said annexed territory and points in the City of Detroit. In making this decision said Supreme Court of the State

of Michigan gave to the acts of the Legislature of the State of Michigan annexing territory to the City of Detroit an effect which impaired the obligations of the contracts between plaintiff in error and said City of Detroit, and between plaintiff in error and the several municipalities of which said annexed territory was formerly a part, contrary to the terms of Section 10, Article I. of the Constitution of the United States, and deprived it of its property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

See

Assignments of Error Nos. 5, 7, 8, 9, 10, 11 and 12 (Rec., 130-131).

ARGUMENT.

The question in this case is this:

DID THE PREDECESSORS IN TITLE AND ASSIGNORS OF PLAINTIFF IN ERROR ENTER INTO A CONTRACT OR CONTRACTS WITH THE CITY OF DETROIT FIXING THE RATE OF FARE WHICH PLAINTIFF IN ERROR SHOULD CHARGE AND RECEIVE FOR TRANSPORTING PASSENGERS UPON ITS RAILWAY IN SAID ANNEXED TERRITORY AFTER ANNEXATION, AND FROM ANY POINT ON ITS RAILWAY IN SAID ANNEXED TERRITORY TO ANY POINT IN THE CITY OF DETROIT, AND FROM ANY POINT IN THE CITY OF DETROIT TO ANY POINT IN SAID ANNEXED TERRITORY.

Defendant in error and the Supreme Court of Michigan answer the question "yes"; plaintiff in error answers it "no." The correct answer depends upon the proper construction of the contracts fixing fares, the language of which has already been quoted. While the language of each of these three contracts differs, it will, we think, be apparent, if it is not so already, that as to the issue involved in this case each must be construed by the same principle and in accordance with the same reasoning, and each must receive the same construction. To answer this question "yes," the language of the contracts fixing fares must receive, and it does receive, an extraordinary construction. It must in that case (and the Courts of Michigan so hold) be construed as fixing the fares for transporting passengers not only on railways which the party to the contract was granted the right to construct within

the then municipal limits of the City of Detroit, but upon railways outside those limits, constructed not by the party to the contract, but by its successor, or by others, and constructed not under grants from the City of Detroit, but under grants from other and different municipalities.

Respecting the proper construction of these contracts fixing fares, we affirm and attempt to demonstrate certain propositions:

I.

THE CONTRACT FIXING FARES NOT ONLY IMPOSES UPON THE CARRIER THE OBLIGATION TO CARRY AT THE RATE SPECIFIED, BUT ENTITLES IT TO EXACT THAT FARE FOR CARRYING.

This proposition is not open to doubt. It was determined in this Court in

Detroit v. Detroit Citizens' Street Ry., 184 U. S., 368.

The question involved in that case was whether the City of Detroit could compel the Detroit Citizens' Street Railway Company, the predecessor in title of plaintiff in error, to carry passengers at the rate of three cents. It was decided that it could not because these very provisions fixing fares entitled it to charge the rates specified, the Court saying (p. 389):

"Nor does the language of the ordinance, which provides that the rate of fare for one passenger shall not be more than five cents, give any right to the City to reduce it below the rate of five cents established by the Company? It is a contract which gives the Company the right to charge a rate of fare up to the sum of five cents for a single passenger and leaves no power with the City to reduce it without the consent of the Company."

II.

THE CONTRACTS FIXING FARES HAVE NO APPLICATION TO STREET RAILWAYS GENERALLY. THEY FIX THE FARES ONLY ON RAILWAYS AUTHORIZED TO BE CONSTRUCTED BY THE ORDINANCE CONTAINING THE CONTRACT, OR ON RAILWAYS ALREADY CONSTRUCTED UNDER FORMER ORDINANCES.

(The Supreme Court of Michigan does not deny this proposition. We think the reasoning of the Court—particularly the last opinion—assumes it to be correct.)

This is precisely what would be expected. It would be surprising if the municipality in which a street railway is to be constructed and the company that is to construct said railway, who possess the right to fix the rate of fare at the time said grant is made, should enter into a contract fixing the rate of fare on a grant that might—or might not—be thereafter made. Such a contract, if not altogether illegal, would be such an interference with the power of later municipal authorities that it must be established by the clearest proof. Not only is such proof entirely lacking, but the language of the contracts fixing fares is not, as we shall endeavor to show, open to the construction that it applies to grants other than those then or thereafter made by the City of Detroit.

The language fixing fares in the ordinance of 1862 (Rec., 56) (this fixes fares on Jefferson Avenue except during workmen's hours) continued in force to 1909 by the ordinance of November 14, 1879 (Rec., 55-57) and continued in force since 1909 by the resolution of October, 1909, (Rec., 65-68) is as follows:

"The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance."

This is clearly limited to the railways therein authorized to be constructed.

The contract fixing the fare on Grand River Avenue is found in Section 3 of an ordinance approved January 3,

1889. The parties to this ordinance are the City of Detroit, grantor, and the Grand River Railway, grantee. The ordinance is found in the Record, pp. 17-19. It refers to the lines of railway constructed by the grantee under former grants, and it grants the right to construct additional lines. Section 3 fixes the rate of fare. It reads as follows (Rec., 18) :

"The lines hereby authorized to be constructed on Crawford Street and Congress Street East shall be operated in connection with the present Grand River Street Railway lines, and, as a consideration of the permission hereby granted, the said Company shall, when filing its acceptance of this ordinance, as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle Street and Grand River Avenue (these were the Company's old lines) and the northerly terminus of its line on Crawford Street, or any point on any of its said lines to any point on its line on Congress Street East, or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress Street East in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford Streets; also, for a continuous trip from any point on the line of said railway to any other point on the lines of said railway for a single fare of five cents for one continuous trip; and shall also, within sixty days of the date of the acceptance of this ordinance, issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said Company, or any portion thereof, traveled continuously either way, when offered for fare by persons taking passage on the cars between the hours of 5.30 o'clock and 7.00 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon."

No argument is necessary to prove that these rates of fare apply only to the railways described in the ordinance.

The third contract fixing fares (this fixes fares on Jefferson Avenue during workingmen's hours) is found in the ordinance of January 3, 1889, the same date as the ordinance last above named. This was an ordinance supple-

mentary to the ordinance of 1862 heretofore mentioned, and by it the City granted to the Detroit City Railway the right to construct several additional lines. The contract is in these words (Rec., 63) :

“Such arrangements shall be made by said Company that within two months after this ordinance shall have been accepted by said Company, it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7.00 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon over any of its lines in said city, for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs 'A,' 'B' and 'C' of this section.”

This is the only contract fixing fares which is not by its terms limited to the railways described in the ordinance of which it is a part. This contract does extend to other railways than those mentioned in the ordinance. It extends to “any of its (the grantee's) lines in said city.” The reason for the use of these words is obvious. At the time the ordinance was enacted the Detroit City Railway, the grantee therein, was operating other lines of railway than those therein named. This will be apparent by a comparison of the ordinance of 1862 with the ordinance of 1889. It was intended that passengers on these lines, as well as on those mentioned in the ordinance of 1889, should receive the benefit of the reduced fare mentioned in this contract. It will be observed that this ordinance and the ordinance for reduced fares on Grand River were passed the same day, and it is to be presumed that it was intended to give patrons of each of the two systems equal rights.

The words “any of its lines in said city” are appropriate to describe existing lines and lines authorized to be constructed; but they are not appropriate words to describe lines that were neither existing nor authorized to be constructed. And even if these words were ambiguous and open to two constructions—one which restricts their meaning to lines then existing or authorized to be constructed, and the other which extends their meaning to lines constructed under grants thereafter made—the Court must place upon them the restricted construction.

For it is not to be presumed that municipal authorities have by a contract made in 1889, fettered either their or their successors' power to fix rates in a street railway grant which could not be made until several years later.

As the contracts fix the rate of fare only on certain railways whose construction and operation was authorized by city ordinances, it follows that those contracts do not regulate the fares in the annexed territory unless the ordinances of Detroit authorized the construction and operation of said railways. Did those ordinances authorize the construction and operation of railways in the annexed territory? We discuss this question under proposition III.

III.

THE ORDINANCES OF THE CITY OF DETROIT DID NOT AUTHORIZE THE CONSTRUCTION AND OPERATION OF RAILWAYS IN THE AN- NEXED TERRITORY.

The ordinances authorizing the construction of the street railway on Jefferson Avenue are:

(a) The original ordinance of 1862 (Rec., 42-52), by which the Detroit City Railway was granted the right to construct and operate a line through Jefferson Avenue from Woodward Avenue "to the eastern limits" of the city, the same to "be completed within six months from March 31, 1863." At that time the eastern city limits were at Mt. Elliott Avenue. (Rec., 4). These limits were extended from Mt. Elliott Avenue to Baldwin Avenue in 1885. (Rec., 5.) Thereafter,

(b) By ordinance of January 3, 1889, the Detroit City Railway was granted the right (Rec., 59) "to extend its double street railway track in, along and through Jefferson Avenue, from the present easterly terminus of its double track on said Jefferson Avenue to the easterly limits of the City of Detroit." This was "to be constructed and in operation within six months from the date of the passage of this ordinance." (Rec., 60.)

The ordinances authorizing the construction and operation of the street railway on Grand River Avenue are:

(a) The ordinance of 1868. (Rec., pp. 9-16.)

This is the ordinance authorizing the construction of the original Grand River Avenue system. The grantee is authorized to construct and operate railways from Woodward Avenue "through said Grand River Avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo tracks." This point of intersection was at that time the city limits. (Rec., 2.) In 1875 the city limits on Grand River Avenue were extended and they were again extended in 1885. (Rec., 2.) In 1888 another ordinance (b) was passed, giving the Grand River Street Railway Company the right to operate a line of cars "on and through the center of Grand River Avenue from the present terminus of its tracks on said Avenue to the westerly city limits." (Rec., 2.)

Later another grant was made (c) in the ordinance of January 3, 1889, to the Grand River Street Railway Company, in these words:

"Consent, permission and authority is hereby given to the Grand River Railway Company to construct, operate and maintain a double-track street railway in, along and through Grand River Avenue * * * from its junction with Woodward Avenue to the city limits." (Rec., 17.) This was "to be constructed and in operation within one year from the date of the passage of this ordinance." (Rec., 19.)

Did these grants authorize the grantee to construct and operate street railways in territory not annexed to the city until 1905 and 1907?

The Supreme Court of Michigan answers this question yes. In the later opinion (Rec., 119 and 120) it is distinctly stated that it is held both in that case and in the earlier case that these grants "operate throughout its (the City's) boundaries, whatever changes may be made in them."

This holding does not proceed upon the ground that the City expressly granted the right to construct and operate in the annexed territory. Indeed, it could not proceed upon that ground for the language of the grants from the City to construct and operate both on Jefferson and Grand River Avenues is that they extend to the "limits of the city." The only possible ground, then, upon which a grant to construct and operate in the annexed territory could

be claimed is that the words "limits of the city" mean those limits as from time to time extended. The Supreme Court of Michigan, then, in deciding that the grants "operate throughout the city's boundaries, whatever changes may be made in them," necessarily decided (and it is apparent from its opinion that it intended to so decide) that the words "limits of the city" mean the limits as from time to time extended. In so deciding, the Court chose to give to these words an enlarged meaning, when it might have given to them a restricted meaning, for it is apparent that these words might have been construed to mean the city limits existing at the date of the grants. The decision of the Supreme Court, and any similar decision, is in our judgment erroneous, for two reasons: (1) The language of the grants is not open to two constructions. Properly construed, the grants end at the existing city limits. (2) If the language is open to two constructions—one that the grant ends at the existing city limits, and one that the grant extends to the limits as changed from time to time—the rule of law that in grants by the public nothing passes by implication requires the adoption of the restricted meaning. We will discuss each of these reasons:

- (1) *The language of the grants is not open to two constructions. Properly construed, the grants end at the existing city limits.*

The grants did not extend into territory that might afterwards be annexed to the city, unless they can be so construed as to authorize postponement of the construction of the railway beyond the then limits until after annexation. This is true because before annexation the municipality of which said territory was a part, alone had authority to determine whether street railways should be constructed and operated in its streets. The grants in question cannot be so construed as to authorize the postponement of construction until after territory was annexed to the City of Detroit. The last and controlling grant on Jefferson Avenue required the railway to be constructed and in operation within six months from the date of the passage of this ordinance. (The ordinance was passed January 3, 1889.) The last and controlling grant on Grand River Avenue (also passed January 3, 1889; Rec., 17-19) required the line to be constructed and in operation within one year from the date of the passage of this ordinance. This language is not open to the construction that it was intended thereby to grant the right to build railways which could not be built unless and until the

Legislature chose to extend the limits of the City of Detroit.

Possibly it may be said that to determine the meaning of "limits of the city" we should see how those words are used in other instances. The words "limits of the city" are used to define the outer terminus of nearly every street railway authorized to be constructed by the City. Note particularly the language of the old Detroit City Railway ordinance (Rec., 45), its later ordinance (Rec., 59 and 60) and the later Grand River Railway Company ordinance (Rec., 17.) In none of these cases does the ordinance omit to provide for the completion of the railway. In most cases a definite time is prescribed for its completion; in some cases this is to be completed "at such times as the public necessity may require" (Rec., 45); in one instance, "within such time as shall be hereafter directed by the Common Council" (Rec., 61); and in another (Rec., 19), "within one year after that portion of Congress Street East beyond Mt. Elliott Avenue shall be opened for public use." In none of these cases could the performance of the obligation to construct be delayed to await the annexation of territory to the city.

The Supreme Court of Michigan says of this reasoning (Rec., 120):

"We do not regard the restrictions in the ordinance as to streets, city limits and time of construction as of controlling import. They do not negative the presumption that the parties contracted with the power of the Legislature to change the city limits in view. The limit of time for completing the lines on certain streets was but a preliminary condition. The subsequent right and ability to operate the lines and collect the fares only became absolute when the line was constructed and the preliminary condition forever disposed of, and then there was no time limit involved except the life of the franchises."

The pith of this answer is in the statement that "the limit of time for completing the lines on certain streets was but a preliminary condition." Undoubtedly, as the Court points out, the completion of the lines was a preliminary condition to the subsequent right and ability to operate and collect fares; but, with all due respect to the Court, the statement of this fact in no way meets our argu-

ment that the limitation of time for completing these lines proves that there was an intent that their construction should not be delayed to await annexation.

It is to be noted in this connection that in an earlier case (See *Detroit Citizens' Street Ry. Co. v. City of Detroit*, 110 Mich., 384, p. 395), in speaking of the original ordinance of 1862 to the Detroit City Railway, the Supreme Court of Michigan said:

"Fairly construed, this language relates to the terms and conditions to be prescribed for the contemplated occupancy of streets, the use of which is presently contemplated by the parties to the contract, and the terms and conditions relate to such occupancy of such streets."

The circumstance that the original and principal grant—that of 1862 to the Detroit City Railway Company—gave the grantee an exclusive right to construct and operate railways on the streets therein specified (See Rec., pp. 42 and 43) proves that it was not intended that the grant should extend beyond the existing city limits. Even if the city could give a grant beyond those limits, it could not give an exclusive grant, for that grant could not become effective until the city limits were extended, and in the meantime the municipality of which the annexed territory was a part had authority to make street railway grants which would deprive the existing city grant of its exclusive character.

Nor is there any other language in these ordinances which indicates that the grants extended outside the then existing city limits. In its last opinion, the Michigan Supreme Court (Rec., 120) refers to language both in the original ordinance to the Detroit City Railway of 1862 and the original ordinance to the Grand River Street Railway Company of 1868, which it is said "intimates an understanding that the growth of the city and development of its public utilities to which the grants should apply were anticipated." The language relied upon is quoted or stated in the opinion. That which is not quoted is verbatim as follows:

(Original Detroit City Ordinance, Rec., p. 43.)

"Provided always, that said railway down Gratiot Street may be continued to Woodward Avenue

through State Street or through Randolph Street, and Monroe Avenue and the Campus Martius, as the grantees or their assigns under this ordinance may elect."

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(Original Grand River Ave. Ordinance, Rec., p. 10.)

Said grantees are hereby "authorized to construct and operate railways * * * through said Grand River Avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo tracks, and also on and through any other street or streets running between the western terminus above specified, and Woodward Avenue, to the Detroit River, as the Common Council shall by resolution designate."

We respectfully submit that there is nothing in this language which indicates the thought that a railway was authorized outside the then existing city limits.

In the language of the original Detroit City Railway ordinance quoted by the Supreme Court is a grant of the exclusive right to construct railways "through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the said City of Detroit and consented to in writing by said corporation." We respectfully insist that this is the only language in these ordinances which can possibly be construed as authorizing the construction of a railway outside the existing city limits, and it has been judicially settled by a decision of the Supreme Court of the State of Michigan, affirmed by this court in a controversy between the City of Detroit and the predecessor in title of the plaintiff in error that this language gave no exclusive right, upon the ground that the City of Detroit lacked authority to make an exclusive grant.

See

Detroit Citizens' St. Ry. Co. v. Detroit, 110 Mich., 384—See 395.

Detroit Citizens' St. Ry. Co. v. Detroit Railway, 171 U. S. 48-53.

Possibly it may be urged that though these words are not effective as a grant, they may nevertheless afford aid in determining the intent of the ordinance. It is a sufficient answer to this contention to say that this evidence

of an intent to make new grants on "other streets and avenues" does not indicate that the present grants on Jefferson and Grand River Avenues extended on those streets beyond the existing city limits.

Nor can it be urged that the parties, by their conduct, placed upon these ordinances a practical construction in any way varying from the legal construction. The City in its petition (Rec., 5 & 6) averred that these ordinances had been practically construed in accordance with its contention. This allegation was denied. (Rec., 28 & 29). As no issue was taken on this proposition, the averment in the answer is to be taken as true.

Lewis v. Detroit Board of Education, 139 Mich., 309.

The record shows, however, that as the city limits on Jefferson Avenue and on Grand River Avenue were extended, the Company, instead of building under its former grant, obtained a grant authorizing it to extend its railway "from the present terminus of its tracks" to the "city limits." (Rec., 2, 59).

If we are right in the foregoing argument, the grants of the City of Detroit did not extend into the annexed territory. If we are not right, then we insist that the judgment is erroneous, for the second reason heretofore mentioned, viz.:

(2) *If the language is open to two constructions—one that the grant ends at the existing city limits, and one that the grant extends to the limits as changed from time to time—the rule of law that in grants by the public nothing passes by implication requires the adoption of the restricted meaning.*

The rule of law that in grants by the public nothing passes by implication is too well settled to be denied.

See

Re Binghamton Bridge, 3 Wall., 51-75;
Charles River Bridge v. Warren Bridge, 11 Pet., 420-544;
Blair v. Chicago, 201 U. S. 462;
Detroit United Ry. v. Detroit, decided May 26, 1913; 33 Sup. Ct. Rep., 697.

This rule means that if the language relied upon, though open to the construction that a grant was made, is also

open to the construction that no grant was made, the latter construction must prevail and the rule has frequently been so applied.

See

Blair v. Chicago, 201 U. S. 462.

Does this rule apply to this case? Here the question is, Shall a grant to construct a railway beyond the existing limits of the city be inferred from language open to the construction that the grant ended at those limits? We submit that it is a clear violation of the rule to infer a grant beyond the city limits. The opinion of the Supreme Court of Michigan does not deny the applicability of the rule. In the opinion of Judge Stone deciding the earlier case (see record in that case, p. 47) it is said:

"The rule that the terms of the franchise must be construed strictly against the respondent * * * is applicable here."

This statement is referred to by Justice Steere in deciding the later case (see record in that case, p. 118) as an "approval of the rule that the terms of a franchise or grant by a municipality shall be construed strictly as against the grantee and favorable as its terms permit to the grantor." We may be in error, but we understand that the Supreme Court of Michigan by the above language indicates its views that the rule under consideration was applicable in the decision of this case. In doing so, it made a very remarkable mistake, for while professing to apply the rule it presumed the grant which the rule deries. This is a mistake which would not have been made had the question arisen upon the claim of the grantee. If the grantee had made the claim that its grant gave the right to construct and operate railways in the annexed territory, the case would have been a typical one, and everyone would have readily seen that it must be denied under the rule in question. It cannot be otherwise when the claim is asserted by the grantor. A contract can have but one proper construction and therefore its construction will not be affected by the circumstance that one party, rather than the other, asserts the claim which is the subject of controversy.

If there is in the opinion of the Michigan Supreme Court anything to indicate that the rule under consideration is inapplicable in this case, it is to be found in the

statement (Rec., 119) that "grants by ordinances, though accepted and amounting to contracts" "designed for the city at large, operate throughout its boundaries whatever changes may be made in them." We do not deny that there may be cases where grants by ordinances operate throughout the city's boundaries, whatever changes may be made in them; but this, we submit, is not such a case. The only language in these ordinances which could possibly be construed as a grant "operating throughout the city's boundaries, whatever changes may be made in them," is that of the original Detroit City Railway ordinance heretofore alluded to granting the right to construct and operate railways "through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit, and consented to in writing by said corporation." This language, as we have heretofore pointed out, has been determined both by the decision of the Supreme Court of Michigan and the decision of this Court to convey no grant whatever. It follows from this decision that the ordinances, instead of granting the right to "operate throughout the City's boundaries, whatever changes may be made in them," granted only the right to operate on certain specified streets to the limits of the city. So that the only ground upon which it can be maintained that there was a grant to operate in the annexed territory is that the words "limits of the city" which mark the extent of the grant both on Jefferson and Grand River Avenues, mean the limits as from time to time extended.

In our judgment this case is not only within the letter of the rule that in grants by the public nothing passes by implication, but it is clearly within the spirit of that rule. If the rule is not applied, the Common Council of the City of Detroit surrendered, during the thirty-year life of the franchise, the power of itself and of its successors to secure better rates for street railway transportation in a territory of indefinite extent and the annexation of which it could neither effect, limit nor permit. (Not until January 1, 1909, when the new Constitution became effective, had anybody but the State Legislature any power to change municipal boundaries). The rule was intended to prevent just such consequences. This is made apparent by the following language, used by Chief Justice Tancy in the opinion of *Charles River Bridge v. Warren Bridge*, 11 Pet. 548:

"The rule of construction announced by the Court (in *Providence Bank v. Billings*, 4 Pet. 514) was

not confined to the taxing power, nor is it so limited in the opinion delivered. On the contrary, it was distinctly placed on the ground that the interests of the community were concerned in preserving, undiminished, the power then in question. And whenever nay power of the State is said to be surroundered or diminished, whether it be the taxing power or any other affecting the public interest, the same principle applies and the rule of construction must be the same."

Moreover, the power of the municipality of which before annexation the annexed territory is a part, is likewise greatly diminished if upon annexation prior grants made by the city immediately become operative in the annexed territory. The operation of the City grants will in every case greatly affect the value of the grants made by the other municipality, and it may render them totally valueless.

If the City can thus diminish the power of another municipality to control street car operations within its jurisdiction—and we deny that it can, for the exercise of that power may be essential to its prosperity and the comfort of its inhabitants—it should never be presumed that it has done so. Upon the contrary, it should be presumed that the City of Detroit made all contracts for the construction and operation of street railways within its borders upon the assumption that its neighboring municipalities had precisely the same right to contract for the construction and operation of street railways within their borders.

A case which, we submit, is in point is that of *Toronto Corporation v. Toronto Ry.*, decided by the Privy Council in 1907 (Ap. C., H. L., English and Scotch L. R. 1907, p. 315). The judges taking part in the decision were Lord Macnaghten, Lord Atkinson, Lord Collins and Sir Arthur Wilson. The Toronto Railway had the exclusive right "to operate surface street railways in the City of Toronto" for thirty years. It was "required to establish and lay down new lines and to extend the tracks and street car service on such streets as may be from time to time recommended by the City Engineer and approved by the City Council." It was held that this did not obligate the Company to extend street car service into territory added to the City after the agreement was made. In our brief

filed in the earlier of these two consolidated cases (pp. 29-31) we made extended quotations from the opinion of the Privy Council and of the judges in the lower court (see Vol. 37, Canada Supreme Court Reports, p. 430), approved by the Privy Council. The reasoning of the Privy Council and of the judges of the lower court, so approved, is applicable to the present case.

We also rely upon *Turner's Falls Fire District v. Miller's Falls Water Supply District*, 189 Mass. 262, referred to in our former brief, pp. 28 & 29, and *People v. Detroit & Howell Plank Road Co.*, 37 Mich. 195. A quotation from the opinion in the latter case shows the question involved and how it was decided:

"When the State gave the Company the right to build their road from a point in the city, and the right to erect gates according to their reasonable discretion, but subject to the condition that none should be placed in the city, it contemplated the city as it then was in respect to limits, and meant that the privilege given within the city should not extend so far as to allow the gates to be set up there and, on the other hand, that the restriction should be confined, territorially, to the then fixed and known bounds of the city. The State could not have designed that as fast as it might enlarge its city's boundaries the defendant's franchise covering the right to place toll gates could be correspondingly annihilated and the gates themselves thereby brought within the limits be instantly converted into a public nuisance." (See p. 198).

This opinion was written by Justice Benjamin F. Graves and concurred in by his associates, Chief Justice Thomas M. Cooley, James V. Campbell and Isaac Marston.

The Supreme Court of Michigan in its opinion in the present case relies on the cases of

Indiana R. R. Co. v. Hoffman, 161 Ind. 593 and
Patterson v. Tacoma Ry. & Power Co., 60 Wash.
406.

These two cases are very much alike and have a superficial resemblance to the case at bar. In each of them the railway company owned and operated a street railway extending from the heart of the city into the country, and in each case it was held that after the boundaries of the

city were extended the passengers were entitled to be carried in the annexed territory under the terms of a contract theretofore made by the City and the defendant company. While we do not concede the correctness of these decisions, they are easily distinguishable from this. In each of them the contract was of a general nature, entirely disconnected from a grant to it and was made with the defendant company itself after it had built its suburban line, and the decision rested, not upon the ground that a grant from the City authorized a line to be constructed outside its existing limits, but upon the ground that the general nature of the contract fixing fares made it applicable to all railways of defendant brought within those limits, though constructed under grants from other municipalities. The courts, in deciding those cases, had no occasion to use the principle by which the Supreme Court of Michigan decided this case, namely, that grants by a city "operate throughout its boundaries, whatever changes may be made in them." Nor could the Supreme Court of Michigan have rested its decision upon the principle of these decisions, for the contracts fixing fare in Detroit were, as we have pointed out, limited to grants made by the City of Detroit.

If our propositions (proposition I., though important, is not essential,) II,—that the contracts relied upon fix fares only on street railways authorized to be constructed by the City of Detroit,—and III,—that the City of Detroit did not authorize the construction of railways in the annexed territory,—are established, then it follows that the contracts relied upon did not fix the rate of fare in the annexed territory, and the decision of the Supreme Court of Michigan must be reversed.

Whoever maintains that the contracts relied upon fix the fares in the annexed territory must assail one or the other of those two propositions. Suppose, for the sake of argument, that he successfully assails proposition II. Then we say:

EVEN IF THE CONTRACTS RELIED UPON DO FIX FARES ON RAILWAYS NOT CONSTRUCTED UNDER CITY GRANTS, THEY DO NOT FIX THE FARES UPON WHICH PASSENGERS SHALL BE CARRIED BY PLAINTIFF IN ERROR ON ITS RAILWAYS IN THE ANNEXED TERRITORY.

Those railways were not built until after the contracts relied upon were made. They were not built by and were never owned or operated by a party to those contracts.

If by any possibility it can be held that these contracts impose upon the grantee the obligation to carry passengers in accordance with their terms upon railways not built under grants from the city, then we respectfully submit that under no principle of law can it be held that this obligation is imposed upon plaintiff in error, whose sole relation to the contract arose from the circumstance that it purchased the railway of a party thereto. Upon the assumption under consideration, the obligation to perform the contracts is not one which would run with the property, nor upon that assumption is there anything to indicate that it was to be performed by anyone except the grantee.

Suppose also, for the sake of argument, that a successful assault is made upon proposition III. Then we say:

EVEN IF THE GRANTS FROM THE CITY OF DETROIT DID AUTHORIZE THE CONSTRUCTION OF RAILWAYS IN THE ANNEXED TERRITORY, THEY DID NOT AUTHORIZE THEIR CONSTRUCTION UNDER THE CIRCUMSTANCES EXISTING IN THIS CASE.

If the City of Detroit granted the right to construct and operate street railways on Jefferson and Grand River Avenues in the territory to be thereafter annexed, said grants, it must be presumed, were conditional upon there being at the time of said annexation no existing grants made by the municipality of which said annexed territory was formerly a part which would prevent the construction and operation of the contemplated railways. Otherwise, the grantee would be required to construct and operate a railway upon conditions not contemplated. In this case when the annexed territory became a part of the City of Detroit there were such existing grants. For instance, on Jefferson Avenue there was a grant for a double-track railway, which did not expire for many years. Surely, in these circumstances the exclusive grant by the City to build a double-track railway could not be effective, nor could its grantee be required to construct and operate said railway. If at the time of annexation the two railways which met at the old city limits had continued to be owned by the companies which constructed them, there could have been, we think, no ground for claiming that the grantee of the City must either build or purchase the railway in the annexed territory. In that case we think it would have been conceded that each of the companies could continue operation under the terms of its grant. We are unable to

perceive any sound reason for saying that this right of each of these companies to continue this operation did not pass to the plaintiff in error, which had express statutory authority to purchase and operate the same. (See 6448 Comp. Laws, heretofore referred to). Any contention that plaintiff in error was bound to perform the obligations of the City Company is answered by saying that the City Company was, under the circumstances, not obliged to operate under the terms of the city grant in the annexed territory.

We respectfully submit that the judgments of the Supreme Court of Michigan should be reversed.

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Supreme Court of the United States

DETROIT UNITED RAILWAY,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Defendant in Error.

(October Term, 1912.—No. 161.)

SUBJECT INDEX.

	Page.
Statement of the Case..	1
Summary.....	13
Specification of Errors relied upon.....	19
Argument	21
As to scope and effect of City Grant.....	21
As to effect of Annexation Act.....	24
As to right of Legislature to confer power on municipality to fix rates of fare.....	32
As to fixing rates of fare being a matter of contract.	32
As to Presumptions of Law.....	36

LIST OF CASES REFERRED TO

	Pages Where Cited.
Bessemer vs. Bessemer City Water Works Company....	33
(152 Alabama, 391).	
Detroit vs. Detroit Citizens Street Ry. Co.....	25, 33, 34
(184 U. S., 268).	
Freeport Water Company vs. Freeport.....	33
(180 U. S., 587).	
Home Tel. & Tel. Company vs. Los Angeles.....	33
(211 U. S., 265).	

(Continued.)

Indiana Railway Co. vs. Hoffman.....	27
(161 Ind., 593).	
Leadville Water Company vs. Leadville,.....	33
(22 Colo., 297).	
Los Angeles vs. Los Angeles City Water Company.....	33
(177 U. S., 558).	
Omaha Water Company vs. Omaha,.....	33
(177 Federal Reporter, 1).	
Patterson vs. Tacoma R. & Power Co.....	28
(60 Wash., 406).	
Shreveport Traction Company vs. Shreveport.....	33
(122 La., 1).	
St. Louis Gas Co. vs. St. Louis.....	35
(46 Mo., 121).	
Toledo vs. Edens.....	35
(59 Iowa, 352).	
Toronto Ry. Co. vs. City of Toronto.....	29
(37 Canada Supreme Court Reports, 430).	
(House of Lords, Appeal Cases 1907, p. 315).	
Turner's Falls Fire Dist. vs. Millers Falls Water Supply Co.	28
(189 Mass., 262).	
Vicksburg vs. Vicksburg Waterworks Company.....	33
(202 U. S., 453).	
Walla-Walla vs. Walla-Walla Water Co.....	33
(172 U. S., 9).	

Supreme Court of the United States

DETROIT UNITED RAILWAY,

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Defendant in Error.

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STATEMENT OF THE CASE.

In April, 1891, the Township Board and Highway Commissioner of the Township of Grosse Pointe, Wayne County, Michigan, made a grant to George Hendrie et al., their associates and assigns, who were about to organize a railway company, of the right to construct and operate a railway on Jefferson avenue, or Lake Shore road, from the westerly to the easterly limits of the township.

Their authority to make this grant and all of the contractual obligations therein contained is not and has never been questioned. Its terms are contained in Exhibit "A" (Record, 11). It provided for a rate of fare of *ten* cents for a ride from any point on Jefferson avenue westerly of what was then known as Grosse Pointe Village to any point in the City of Detroit, and from any point in the City of Detroit to any point in the township westerly of Grosse Pointe Village. The territory included within this ten cent fare limit in the township covered territory a part of which thereafter became the Village of Fairview, and which, upon the repeal of the charter of the Village of Fairview and the extension of the city limits of the City of Detroit, as hereinafter pointed out, became in part within the limits of the City of Detroit, and this part covers the territory over which the dispute in this case arises.

The remaining portion of the Village of Fairview not taken into the city reverted to the township and to another village still in existence. In accordance with the terms of this grant, the grantees therein organized a corporation for that purpose, and long prior to the formation of the Village of Fairview and the extension of the city limits of the City of Detroit, constructed and put in operation the railway provided for. The company was known as the Jefferson Avenue Railway Company, and was wholly independent of and had no connection whatever with any railway company organized, owned, or operating street railways in the City of Detroit. It charged the rate of fare provided for in the grant.

In the year 1903 the territory in dispute was included in the territory organized as the Village of Fairview, which extended from the westerly boundary of the township to a point about three and one-half miles easterly thereof, thus including within the boundaries of the new village a part of the territory covered by the township grant of April, 1891 (Exhibit "A", which, with other township and village grants, provided for a double track railroad about ten miles long (see Blue Print attached to record). In 1905 the village, desiring to widen Jefferson avenue and have the railway tracks placed in the center of the street as widened, entered into an agreement (Exhibit "D," Rec. 15-16) with the company then owning the railway, by which it was agreed, on the part of the company, that it should move its tracks to the center of the street and lay and maintain the pavement between the outer rails of the double track, which was a new burden, the village agreeing that the rate of fare for a ride within the village limits should be five cents, but that the new agreement should not in any way alter, amend or repeal the original grant made by the township in 1891 (Exhibit "A"), and confirming that original contract, and agreeing that it should remain in full force and effect. So that the owners not only constructed and put in operation, and for many years operated the line under the rate of fare contended for by respondent, but it went to the extraordinary expense of removing its tracks to the center of the highway and rebuilding its road and assumed and performed the obligation to construct and maintain the paving under the confirmation of its original grant made by the village, which had succeeded to the township in jurisdiction over the territory in dispute. By this agreement with the village the company was protected in two ways in its right to collect the rate of fare provided for in the original grant: namely, that for a ride within the disputed territory a right to charge five cents was conceded by the village, and in express

language the terms of the original grant and contract were to remain in full force and effect. The contract which was made between the village and the railway company confirming the right and providing for the removal and reconstruction of the tracks in the center of the street, was to continue for a period of thirty years from the date thereof; that is to say, until May 3rd, 1935.

It is further to be noted that the territory included in the Village of Fairview did not include all the territory in the township covered by the original grant made by the township. On the contrary, at the present time a large portion of the territory covered by the original township grant remains wholly subject to the jurisdiction of the Township of Grosse Pointe. In 1907 the Legislature of the State repealed the charter of the Village of Fairview for the purpose of annexing a part of the territory forming the village to the City of Detroit, and in the same act extended the jurisdiction of the City of Detroit over about two-thirds of the territory of the former village. This two-thirds of the territory of the former village is what we call the disputed territory. No reference is made in this Annexation Act, directly or indirectly, to the township grants and contract of 1891 or the Village of Fairview contract above referred to or to the right of the railway company. It provides in general terms that the existing charter of the city and "all other statutes, laws and ordinances applicable to said City of Detroit shall apply to and be operative in the territory so annexed to said city."

At the time of the original township grant in April, 1891 (Exhibit "A"), the railways in the City of Detroit were owned and operated by a company called the Detroit City Railway. It subsequently, in 1890, sold its lines in the city to the company called the Detroit Street Railway Company, which last company in turn sold all of its city lines to a company called the Detroit Citizens' Street Railway Company, which last named company continued to own the lines until 1901. No one of these three named companies ever owned or had any interest in, or control over the railway constructed under the grant from the Township of Grosse Pointe, as afterwards confirmed by the Village of Fairview. They were not in any way privy to the title to that property or in any way concerned in its ownership or operation, and neither of them ever was successor to or assignee in title or otherwise to the company which constructed, maintained or operated the railway under the township and village grant.

The original Jefferson Avenue Company, however, sold its line, after having operated for a number of years, to a company known as the Detroit Suburban Railway Company, which was wholly independent of and never had any connection with either the Detroit City Railway, the Detroit Street Railway Company or the Detroit Citizens' Street Railway Company, nor did either of those three companies have any interest in connection with or in relation to the Detroit Suburban Railway Company. It was the successor and assignee by purchase of the railway constructed and put in operation by the Jefferson Avenue Railway Company, so that the Jefferson Avenue Railway Company and the Detroit Suburban Railway Company constructed, maintained and operated as independent concerns the railways constructed under the township grant of 1891 down to 1902. Nor did either the Jefferson Avenue Company or the Detroit Suburban Railway Company ever become the successor in title, assignee or grantee in any sense or respect whatever of any portion of the railways formerly owned, constructed and maintained by the Detroit City Railway, Detroit Street Railway Company or the Detroit Citizens' Street Railway Company, so that there was no privity, either way, of title to any portion of the street railways in question either, in the City of Detroit, or in the township between the Jefferson Avenue Railway Company or the Detroit Suburban Railway Company, on the one hand, and the Detroit City Railway, the Detroit Street Railway Company or the Detroit Citizens' Street Railway Company on the other.

On December 31st, 1900, the Detroit United Railway Company, acquired all of the lines of railway in the city of Detroit, which included a system of railways constructed and put in operation by the Detroit Railway under separate and distinct grants and the system of railways which had been constructed and put in operation by the Detroit City Railway, Detroit Street Railway and The Detroit Citizens' Street Railway, under separate and distinct grants and various other railways within the limits of the city and at the same time acquired the railway constructed and put in operation by the Jefferson Avenue Railway and the Detroit Suburban Railway Company under the Township of Grosse Pointe and Village of Fairview grants, at the same time acquiring by purchase the contract grants and rights under which the various systems of railways were constructed, maintained and operated. The Detroit United Railway continued to operate the railway constructed under the Township of Grosse Pointe grant as confirmed and modified by the grant from the

Village of Fairview under the terms and provisions of those grants, charging the rate of fare provided for therein, and its right so to do remained undisputed until the commencement of this proceeding. It is now claimed that the Act of the Legislature annexing the disputed territory and included within the original township and village contracts swept away the right of the company to charge the rate of fare provided for in those grants and substituted for the contracts created thereby, the contract arrangement existing between the City of Detroit and the former company, which was never a part of or had any relation to the contracts with the township or village or the railway constructed and put in operation thereunder.

By force of the conveyance, Exhibit D, dated June 8th, 1891, R., p. 19), from Hendrie and others to the Jefferson Avenue Railroad; Exhibit H, dated November 1st, 1892 (R., p. 20), from George Hendrie and others to the Detroit Suburban Railway; of Exhibit I, dated December 31st, 1900 (R., p. 21), from the Detroit Suburban Railway Company to the Detroit United Railway Company, the last named company acquired title to the railway constructed under the township grant, Exhibit B, and of all the rights, privileges and franchises conferred by the township grant referred to, and has continued since that date to own and operate and enjoy the same; so that when the grant and contract made by the Village of Fairview, Exhibit D (R., pp. 15 and 16), was made in 1905, the Detroit United Railway was the owner of the railway constructed under the township grant and of all the rights, privileges, grants and contracts connected therewith, and under which it had been constructed and operated.

The Detroit Suburban Railway Company and the Detroit United Railway were both incorporated under the Street Railway Act of 1867, entitled "An Act to Provide for the Formation of Street Railway Companies," being Act 35 of the Public Acts of 1867, approved March 5th, 1867, and of all the amendments thereto. (Compiled Laws of Michigan, 1897, Chapter 168). The provisions of that Act which apply and are pertinent to this case are contained in Sections 13, 14, 15 and 20. They are hereinafter quoted in full. From them it will be noted that there are two distinct sections and provisions conferring powers upon a company formed thereunder with reference to the acquisition of a street railroad. Section 13 provides the manner in which a street railway corporation may, in the first instance, get the consent of a city, village or township to the construction, maintenance

and operation of a railway in a city, village or township, and thus by actual construction become the owner of a railroad.

Section 15, however, contains a distinct and separate provision affecting the power of such a company to acquire by purchase a railroad already built. It was under the authority of Section 15 that the Detroit United Railway became the owner of the railroad constructed in the disputed territory under the township grant in the Township of Grosse Pointe in 1891. That section, in express terms, provides that any street railway company may also acquire by purchase any street railroad in any city or village owned by any other corporation or company, together with the real and personal estate belonging thereto, and the rights, privileges and franchises thereof;

"And may use, maintain and complete such road, and may use and enjoy the rights and privileges and franchises of such company, the same and upon the same terms as the company whose road and franchises were so acquired might have done."

The effect, therefore, of the decision of the State Supreme Court is to nullify completely the provisions of this section, and to deprive the company of its right to use and enjoy the rights, privileges and franchises acquired by its purchase, and to substitute therefor rights, privileges and franchises of a different character, granted by an entirely different municipality, upon the theory that by operation and effect of the Annexation Act of 1907 rights, privileges and franchises that were created by a different municipality in making a grant for a wholly different road became substituted for those under which the purchased road had been constructed.

A more specific analysis and statement of the provisions of the contracts and grants within the former limits of the City of Detroit, and which it is claimed, by operation of the Annexation Law, were put in force and apply to the railroad in the disputed territory, and the history of the various companies that had from time to time acquired the same, and a more extended quotation of the provisions of the statute above referred to is proper to be made at this time.

The Detroit City Railway, organized in 1862, obtained the first grant for the construction and operation of street railways in Detroit. The first grant made to that company, with certain amendments thereto, is contained in Exhibit J (R.,

pp. 23-31), and was to continue in force from November 24th, 1862, to 1892. By the provisions of Exhibit K (R., p. 31), the rights conferred by Exhibit J were continued in force until November 14th, 1909. By a supplemental grant of January 3rd, 1889, Exhibit L (R., pp. 31-32), additional lines were granted to that company; and it is the claim by the city in this case that the rates of fare fixed by subdivision D of Section 4 (R., pp. 32-33), of this last named grant of January 3rd, 1899, Exhibit L, are extended to and substituted for the rates of fare fixed by the township grant within the disputed territory, with the full force and effect of requiring the respondent to carry passengers at the rate of fare fixed by said subdivision D from any point in the disputed territory to any point in the City of Detroit, for one fare, at the rate of eight tickets for twenty-five cents. Exhibit L was purely a contractual ordinance, and was duly accepted by the company and acted upon. It, however, contained no provision requiring that the company should sell the tickets provided for in subdivision D on the cars, and consequently the Council, thinking that the company was not affording sufficient opportunity to the traveling public to purchase the tickets, enacted the ordinance, Exhibit M (R., p. 33), requiring them to be kept for sale by the conductors on cars; but it will be noted that it limited the right to their use to the authority contained in Exhibit F. For convenience of argument, subdivision D of Section 4 of Exhibit L and Exhibit M are quoted in full.

The Michigan Constitution of 1850 contains the following provisions:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

"No corporation except for municipal purposes or the construction of railroads, plank roads and canals shall be created for a longer time than thirty years."

The first street railway legislation in Michigan was in 1861, when the Legislature added two sections to the Tram Railway Act of 1855, which read:

"Sec. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State.

"Sec. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them, provided that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such terms and conditions as said authorities may from time to time prescribe."

In 1863 (*Laws of 1863*, p. 35) three additional sections were added to the act:

Sec. 35 authorized corporations organized under it to mortgage "their franchise, road, superstructure, fixtures, rolling stock and equipments."

Sec. 36 authorized corporations organized under the act "to extend from time to time their routes and lines of road and track and also to build entire new routes and lines of roads and tracks: Provided, however, such corporation or association shall first acquire the right of way or easement for such extension or new routes, in conformity to the provisions of this act."

Another proviso required the corporation to file with the Secretary of State a certificate containing, among other things, "a definite description of the road or roads proposed to be built," which certificate was to "be deemed a part of the articles of association of such corporation," etc.

Sec. 37 authorized extensions into townships with the written consent of the township authorities, "and which *consent may* contain such regulations in reference to the construction, location and operation of the portion of said road in such town or towns *as may be agreed* upon between the corporation and said officers respectively, which are hereby made valid and effectual."

The tram railway act required the articles to state the place from and to which the proposed railway is to be constructed, and each mine, city or village to or through which it is intended to pass and its length as near as may be.

Laws of 1855, p. 338. (*C. L. 1897*, Chap. 167.)

In 1867 (1 *Laws of 1867*, 256) the following proviso was added to Sec. 34:

"Provided further, that after *such consent* shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions *whereby the rights or franchises so granted shall be destroyed or unreasonably impaired*, or such company or corporation *be deprived of the right of constructing, maintaining and operating such railway* in the street in such consent or grant named, pursuant to the terms thereof."

Sec. 36 was amended making it a sufficient designation of the route or routes to declare in the articles of association "that said railway is to be constructed and maintained in such streets or public ways of the particular city as has been or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities."

Companies theretofore organized were authorized to amend their articles of association to conform to this section.

Previously at the same session (1 *Laws of 1867*, p. 46), the Legislature passed a general street railway act, which is not materially different from the tram railway act of 1855, except in the one particular that Sec. 20 confers express authority to fix rates of fare by agreement between the street railway company and the corporate authorities.

Sections 13, 14, 15 and 20 of that Act are as follows:

"Sec. 13. Any street railway corporation organized under the provisions of this act may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and

maintain their road, in and along the streets or highways of any township adjacent to said city or village, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township. Any company organized under the provisions of this act may construct, use, maintain and own a street railway for the transportation of passengers, in and along the streets and highways of any township, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township."

"Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

"Sec. 15. Any street railway company may also purchase and acquire, either at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township, owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and *may use and enjoy the rights, privileges and franchises of such company, the same, and upon the same terms as the company, whose road and franchises were so acquired might have done.* Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole, or any part thereof, together with their railway, fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage, whenever the corporation shall deem it expedient so to do."

"Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of

persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

The Tram Railway Act of 1855, as amended in Chapter 167, and the Street Railway Act of 1867, as amended in Chapter 168 of the Michigan Compiled Laws of 1897, Vol. 2, pp. 2027, 2037.

JEFFERSON AVENUE.

The old Detroit City Railway was organized in 1863 under the Tram Railway Act, to accept an ordinance (Record, p. 23) approved November 24, 1862 (as amended December 27, 1862, and January 12, 1863), granting the consent of the city for the construction of street railways on the principal streets, specifically named, within the city limits, "and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit and assented to in writing by said corporation" (*Sec. 2*).

It was stipulated that "The routes of all said railways shall commence in the Woodward avenue road at Campus Martius; from thence running on their several courses to the outer limits of the city" (*Sec. 5*).

The Jefferson avenue railway was to be completed "to the eastern limits" within six months from March 31, 1863 (*Sec. 6*).

At that time the eastern boundary of the city as fixed by the city charter of February 5, 1857, was at Mt. Elliott avenue (*see map*).

June 5, 1885, the eastern limits were extended to a point 200 feet east of Baldwin avenue, and January 3, 1889, the Common Council authorized an extension of the street railway from Mt. Elliott avenue "to the easterly limits of the City of Detroit."

The City of Detroit never made any street railway grant on Jefferson avenue east of Baldwin avenue.

The Township of Hamtramck, on Jefferson avenue, extended from Mt. Elliott avenue to the westerly line of the Township of Grosse Pointe at Hurlbut avenue, where the Detroit Water Works are located (*see map*).

The Township of Hamtramck made a grant to the Hamtramck Street Railway Company August 12, 1873, which was confirmed to the Detroit City Railway November 1, 1881 (*Record*, pp. 8, 9).

And April 14, 1891, the Township of Hamtramck made a grant to George Hendrie and others for the construction of a street railway on Jefferson avenue in said township" (*Record*, p. 6, folio 10; and recitals in Exhibit "F," p. 18, 3rd paragraph).

The easterly limits of the City of Detroit were not extended from Baldwin avenue to the westerly line of the Township of Grosse Pointe at Hurlbut avenue until May 13, 1891 (*see map*).

The Township of Grosse Pointe (on Jefferson avenue) extended from Hurlbut avenue to the Macomb County line.

Hurlbut avenue is shown on the map by a *dotted* line, over which is written: "Old westerly limits Grosse Pointe Township."

The central part of the township, extending from the Cadieux Road to the Weir lane, was reincorporated as the Village of Grosse Pointe in 1889.

The village is shown on the map under the label, "The Village of Grosse Pointe (as it existed prior to May 20, 1893).

The Village of Grosse Pointe made a street railway grant to George Hendrie and others March 13, 1891 (*Record*, p. 13).

The Township of Grosse Pointe made a grant to George Hendrie and others April 8, 1891 (*Record*, p. 11).

All these grants are now held by the Detroit United Railway.

RATES OF FARE.

The Detroit City Railway ordinance of November 24, 1862, provided that "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance" (*Record*, p. 26, Sec. 8).

The final grant from the Township of Hamtramck extended the one fare zone of the Jefferson avenue line to the west line of the Township of Grosse Pointe, at Hurlbut avenue, which is on the east line of the Detroit Water Works property.

The grants from the Village of Grosse Pointe (March 13, 1891) and from the Township of Grosse Pointe (April 7, 1891), contemplated a railroad the whole length of Jefferson avenue in the township, including the village, that is from the easterly limits of the Township of Hamtramck at Hurlbut avenue and the Water Works to the Macomb County line.

The fare was not to exceed five cents in the Village of Grosse Pointe, and ten cents from the westerly line of the village to or from any point on Jefferson avenue in the City of Detroit (*Record*, p. 13, *Sec. 4*); and five cents additional for a ride in the township easterly of the village (p. 13, *Sec. 4*).

The Village of Fairview was incorporated in 1903, and its territorial limits included all the territory in the Township of Grosse Pointe lying between the easterly line of the City of Detroit at Hurlbut avenue and the west line of the Village of Grosse Pointe at the Cadieux road (*see map*).

The grant of the Village of Fairview of May 3, 1905, was for thirty years, and it fixed a fare of five cents for a ride within the village (*Record*, pp. 15-16, *Sec. 3*).

SUMMARY.

The result of these township and village grants was that the fare of five cents prevailed on Jefferson avenue as far east as Hurlbut avenue, which was the dividing line between the townships of Hamtramck and Grosse Pointe.

Another five-cent zone extended from Hurlbut avenue to the west line of the Village of Grosse Pointe at the Cadieux road.

The third five-cent zone extended from the Cadieux road to the Macomb County line.

Passengers entering the cars east of the Cadieux road either in the Village of Grosse Pointe or in the township east of the village, had a right, on the payment of a five-cent or a ten-cent fare, to ride to the then city limits at Hurlbut avenue, or vice versa.

The significant and important fact is that these township and village zones extended to Hurlbut avenue, and the township and village grants and contracts secured the right of transportation to and from the city limits at Hurlbut avenue at a fare of five cents between Hurlbut avenue and the Cadillac road, and ten cents between Hurlbut avenue and the Macomb County line.

This was the contract condition of these grants when the State Legislature, by an act approved October 24, 1907, extended the limits of the City of Detroit into the Township of Grosse Pointe and the Village of Fairview, a distance of 12,448 feet to the Alter road (*see map*).

DETROIT CITY ORDINANCES.

"Sec. 4 (D). Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon over any of its lines *in said city* for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs ('A,' 'B' and 'C' of this section."

An ordinance partly regulatory and not contractual approved February 4, 1893, and amended February 26, 1895, and not accepted by the company (Record, pp. 2 and 33), reads:

"Whereas, Section 6 of an ordinance approved January 3, 1889, being part of Chapter 109 of the Revised Ordinances of the City of Detroit for the year 1890, provides that the right to make such rules, orders and regulation as may from time to time be deemed necessary to protect the interests, welfare and accommodation of the public in relation to the Detroit City Railway, its successors and assigns, is reserved to the Common Council of the City of Detroit: and

"Whereas, paragraph 'D' of Section IV. of said ordinance approved January 3, 1889, with reference to said railway being part of Chapter 109 of the Revised Ordinances of the City of Detroit for the year 1890, provides that said railway company shall issue and sell

tickets for fare at the rate of eight (8) tickets for twenty-five cents, to be good for transportation between certain hours of each day,

"It is hereby ordained by the People of the City of Detroit:

"Section 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns, to furnish and provide conductors on each and every car operated by the said company *within the limits of the City of Detroit* with tickets to be good for transportation between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m., each ticket to be good for transportation as provided for in said ordinance.

"Sec. 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductor or other duly authorized agents, to any person or persons applying therefor upon each and every car operated by said company *within the limits of the City of Detroit*, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5:30 and 7 a. m. and 5:15 and 6:15 p. m. at the rate of eight tickets for twenty-five cents, each ticket to be good for one fare.

"Sec. 3. For each and every day in which the said Detroit City Railway, its successors and assigns, shall neglect to provide tickets and refuses to sell to persons applying therefor, as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

"Sec. 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine, when so imposed, may be recovered from the person or corporation so convicted in an action at law in the proper court."

It will be noted that this ordinance does not undertake to give any greater right of carriage than is given by the contractual ordinance of 1889 (*Record*, 31-32).

December 10, 1907, a complaint was made to the Recorder's Court of Detroit of a violation of the ordinance of February 4, 1893, and the Detroit United Railway pleaded not guilty (*Record*, p. 3).

On the trial of the case it appeared that the alleged violation of the ordinance took place in that part of the Village of

Fairview which had then been recently annexed to the City of Detroit (*Record*, p. 4).

Counsel for the defendant then introduced in evidence the township and village grants stated above, and the acceptance of the same; also the conveyances by which they became the property of the Detroit United Railway; also the ordinances of the City of Detroit, stated above; and articles of association of the Detroit United Railway (*Record*, pp. 6-7).

Explanatory testimony was given by Mr. Strathearn Hendrie (*Record*, pp. 8-9).

Thereupon the following requests were made by the defendant:

"1. The defendant requests the Court to find the defendant not guilty and to enter judgment thereon in favor of the defendant for the reason that the defendant is not required to sell so-called workingmen's tickets at the place where the witness for the people testified he offered to purchase the same.

"2. It appearing that the alleged refusal to sell tickets occurred on the railway running through the territory which was within the limits of the Village of Fairview, and recently annexed to the City of Detroit, and it appearing that a grant or franchise for said railway was made to the defendant by said village, and in said grant the rate of fare was fixed at five cents, and there was no stipulation under which it was agreed that said tickets should be sold or accepted at the rate of eight for twenty-five cents, the defendant requests the Court to find that said grant is a binding contract fixing said rate of fare and its obligations cannot be impaired by the Act of the Legislature or Ordinance of the City of Detroit.

"3. That so far as the Act annexing the territory embraced within the limits of the Village of Fairview (or part thereof) purports to make operative any ordinance of the City of Detroit requiring the defendant to sell or accept the so-called workingmen's tickets on the cars of defendant within the territory so annexed, said act impairs the obligation of the contract embodied in the said grant by the Village of Fairview to this defendant and its acceptance by this defendant in violation of Section 10 of Article I. of the Constitution of the United States, and Section 43 of Article IV. of the Constitution of this State, and deprives the defendant

of its property without due process of law, in violation of the fourteenth amendment of the Constitution of the United States.

"4. That the act annexing the territory within the Village of Fairview to the city should be so construed as not to impair the obligation of the contract in relation to the rate of fare between the Village of Fairview and the defendant.

"The defendant herein claims the benefit of the provisions of Article I., Section 10, of the Constitution of the United States, and Section 43 of Article IV. of the Constitution of this State in respect to said contract.

"5. It appearing that the grants for the construction and operation of the railway which ran through the late Village of Fairview, in which territory the alleged refusal to sell tickets occurred, were made by the Township of Grosse Pointe and by the Village of Fairview to parties other than the Detroit City Railway, and said Detroit City Railway neither constructed nor operated said railway, this defendant requests the Court to find that it is neither a successor nor assignee of said City Railway with respect to the railway on which said refusal occurred, and this defendant cannot be charged or held guilty as a successor or assignee of said Detroit City Railway under the ordinance in this case.

"6. It appearing that the Detroit City Railway neither owned nor operated the railway on which the refusal to sell tickets occurred, nor had any franchise or grant from township or village authorities therefor, this defendant requests the Court to find that it is neither a successor nor assignee of said Detroit City Railway with respect to said railway.

"These requests were all that were made by either party for finding by the Court.

"To the refusal of the Court to find as requested the defendant excepted" (*Record*, pp. 9-10).

The Court found the defendant guilty, and February 27, 1908, imposed a fine of \$100 and \$5.00 costs.

A writ of certiorari from the Supreme Court of Michigan was allowed and a return made to the writ. (*Record*, p. 3).

The case was heard in the Supreme Court, and April 1, 1910, an opinion was filed and the judgment below was affirmed (*Record*, pp. 41-42).

A rehearing was had, and September 28, 1910, an opinion was filed and the judgment below again affirmed (*Record*, pp. 46-48).

The opinions of the Supreme Court of Michigan are in the record, and the case is reported in 162 *Mich.*, 460, 463.

A writ of error from the Supreme Court of the United States was allowed by the Chief Justice of the Supreme Court of Michigan (*Record*, pp. 48-53).

An assignment of errors was filed raising the same Federal questions as were raised in the Recorder's Court of Detroit as stated above (*Record*, p. 54).

In order to have a clear understanding of the record and the questions involved in this case, it will be necessary to examine the map or blue-print which is a part of the record, and will be found at the back of the printed record on file.

The various easterly city limits since 1857 are indicated on the map, also the Township of Grosse Pointe and the Villages of Grosse Pointe and Fairview, which have made grants to the predecessors of the plaintiff in error. Reference is made to *Hurlbut avenue* and the *Township of Hamtramck*, which do not appear on the map. *Hurlbut avenue* is indicated on the blue-print by the dotted line which has written under it, "Old Easterly City Limits of Detroit by Act of May 13th, 1891." The Township of Hamtramck covered that portion of the City of Detroit which lies between *Hurlbut avenue* (dotted line) and *Mt. Elliott avenue*, which was the easterly city limits by Act of February 5th, 1857.

The disputed territory lies between the present easterly city limits of Detroit, as fixed by Act of October 24th, 1907, and the dotted line (*Hurlbut avenue*) marked "Old Westerly Limits Grosse Pointe Township." This, it will be noted from the map, forms the major portion of the former Village of Fairview. The distances are indicated in feet and the distance included is shown by arrow heads. Thus, the length of the disputed territory is shown by the map to be 12,448 feet, or about two and one-third miles. This is nearly one-third of the entire distance of the Grand River and Jefferson line in the City of Detroit, west of the disputed territory.

The City of Detroit is seeking by this action to require the plaintiff in error to operate nearly a third more mileage without the payment of an additional fare. Of the right of the defendant in error to do this is the question involved in this

suit. It will be noted that the mileage in the Township of Grosse Pointe and the villages therein situated, outside of the present limits of the city, covers in all 38,633 feet, or more than 7 miles. Should the City of Detroit continue its present rapid growth and its policy of annexing adjoining territory, the city will undoubtedly some day extend along the lake shore to the Macomb County line, and will include all of the line of railway indicated on the map. This seven miles of railway, together with the two and one-third miles in the disputed territory, makes a considerably greater distance than that now operated on the entire Grand River-Jefferson line in the City of Detroit outside of the disputed territory (west of the dotted line).

SPECIFICATION OF ERRORS RELIED UPON.

(1) The Supreme Court of the State of Michigan erred in holding that the respondent, the Detroit United Railway, was bound by the terms of the contract with the City of Detroit contained in the various city grants with reference to rates of fare, and especially by the terms of the contract as to rates of fare contained in Subdivision D of Section 4 of Exhibit L (R., p. 32), to carry passengers for the single rate of fare provided for therein for any distance within the limits of the city, as the same might be extended from time to time, on their railroad, which it might have acquired, which had theretofore been constructed and put in operation by a prior owner under a contract and grant with the municipality having jurisdiction of the territory named at the time the grant was made, and which specifically fixed and provided for a rate of fare within the annexed territory and from or to any point in said outside territory to or from any point in the City of Detroit, as it then existed.

(2) The Supreme Court of the State of Michigan erred in holding that by reason of the terms of the original contract with the city, and the operation and effect of the Annexation Act, the city contract as to rates of fare was put in force and effect in the annexed territory, and that the effect of the annexation of the territory in dispute was to deprive the Railway Company of its right to charge the rates of fare fixed and provided for in the original township and village grant under which the railroad was constructed and put in operation.

(3) The Supreme Court of the State erred in holding, in substance, that the Legislature could, in effect, repeal the

contract as to rates of fare that has been made by the contract with the Township of Grosse Pointe, Exhibit B (R., p. 13), and with the Village of Fairview, Exhibit D (R., p. 15), and substitute therefor the rate of fare fixed by Subdivision D of Section 4 of the contract of January 3rd, 1889, Exhibit I. (R., pp. 31-32), so that but a single rate of fare prevailed in all of the territory included within the enlarged City of Detroit.

(4) The Annexation Act of October 24, 1907 (Local Act, Extra Session, 1907, p. 55), as construed and applied by the Supreme Court of the State, impairs the obligation of the grants and contracts of the Township of Grosse Pointe, and the Village of Grosse Pointe, and Village of Fairview, held by the Detroit United Railway as the assignee of the Detroit Suburban Railway, assignee of the Jefferson Avenue Railway, assignee of George Hendrie and others, in that it deprives the Detroit United Railway of the right to collect fares for rides in the annexed territory, and is therefore in violation of Section 10, Article I., of the Constitution of the United States.

(5) The ordinance of the Common Council of the City of Detroit of February 4, 1893, as amended in 1895 (R., p. 2), also impairs the obligations of said contracts, because it imposes a penalty on the company for exercising the rights secured by said contracts.

(6) The Supreme Court of Michigan erred in affirming the judgment of the Recorder's Court of Detroit in refusing to sustain the requests made by the counsel for the Detroit United Railway numbered 1 to 6, inclusive (R., pp. 9-10).

(7) The contract rights held by the Detroit United Railway are property, and to deprive the company of those rights is a violation of the Fourteenth Amendment of the Constitution of the United States, in that it is a taking of the property of said Detroit United Railway without due process of law.

ARGUMENT.

I.

The Street Railway Act provides two methods by which a street railway company may become the possessor and operator of a street railway company.

Section 13 provides for obtaining directly to the company of a grant from the municipality of the franchise or right to construct and put in operation as an original enterprise a street railway in streets specifically named in the grant. Under this method the terms and conditions under which the consent is granted are subject to negotiation between the city and the company, and when agreed to are necessarily, in many respects, contractual in character. When the railway is constructed this grant becomes attached to that particular railway, and together they constitute a street railway. Grants of this kind and character have been held by the State Supreme Court of Michigan to be easements, and consequently real property held by the grantee for the purposes and subject to the terms and conditions for which they are acquired.

By Section 14 it is expressly provided that after any city, village or township has consented to the construction and maintenance of a street railway, or granted any rights or privileges to any company, and the same has been accepted by the company, such township, city or village shall not revoke the consent nor deprive the company of the rights and privileges conferred thereby.

The other method of acquiring a street railway expressly authorized by the Act is found in the provisions of Section 15. It in direct language empowers the company to acquire by purchase or lease any street railway in *any* city, village or township owned by any other company, together with all the real and personal estate, rights, privileges and franchises pertaining thereto, and expressly reserves to the company the right to use and enjoy the rights, privileges and franchises so acquired in the same manner and upon the same terms as the selling company might have done.

It is quite clear, also, from the language of this section that a street railway company formed under the Act may

acquire different and separate systems of street railways and hold and operate and enjoy them at the same time without any connection between them under both sections. That is to say, that the same company may acquire and own a street railway as an original venture under the provisions of Section 13 by direct agreement and grant from the city; and while owning and operating a railroad and enjoying an easement thus obtained it

"May also purchase or acquire, either at public or private sale, whether judicial or otherwise, or may hire any (another) street railway in any city, village or township owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights, privileges and franchises of such company in the same manner and upon the same terms as the company whose road and franchises so acquired might have done."

The language of this provision is significant. It can have no intelligent interpretation other than that it was the clear intention of the Legislature that an existing railway company having already constructed a road as an original venture under terms and conditions agreed upon with the municipality, might either within or without the boundaries of that municipality acquire another railroad which would in no sense be subject to the terms and conditions under which it actually constructed and put in operation its first railway, and that the terms and provisions of neither grant would be affected by the terms and provisions of the other grant, and that the activities of the company are not to be confined to the limits of any one municipality, or to the operation of one particular system of railways. It is a matter of common knowledge that this has been the practical construction of these provisions of the Act, and there can be no question, in our opinion, that it is the proper construction thereof.

It is quite clear that there may be unity of title of separate systems of railroad that have been constructed and put in operation under different grants and terms and conditions wholly unlike each other, and without subjecting the ownership and operation of either one to the terms and conditions that apply to and are in force upon the others. We do not wish to be understood as asserting that a street railway company might not by the terms of agreement with the municipi-

pality agree that any street railway which it might thereafter acquire within that municipality would, after such acquisition, be maintained and operated under the terms of its contract with the municipality, with the force and effect that its contract would be substituted for the contract under which the acquired road was constructed. But that is not this case. It is quite clear that no such contract or agreement exists in this case, either express or implied, and we further assert, as a principle of law, that forced or attenuating interpretation will not be permitted to be given to doubtful language, if any such exists, for the purpose of destroying contract rights, about the validity of which there is no question.

It is a matter of common knowledge that much of the financing which takes place in the construction of enterprises of this character is by the method of bond and mortgage; and this method is recognized by the provisions of Section 15, which in express terms authorizes the mortgaging of a purchased street railway. This authority expressly permits the mortgaging of these contract franchise rights, and the mortgagee, as a matter of course, is entitled to have these contracts remain unmodified in substance, in so far as they are substantial security. Can it be said that a person investing in these securities is bound to foresee the happening of a chain of events such as that the territory in which the road is constructed is to change its municipal character; that jurisdiction over the same will pass from one municipality to another, and thence to another; that the legal title to the road will also in like manner pass through several companies until it finally lodges in a company having other railroads constructed and maintained under other contracts, with the effect that the contract under which he has his mortgage will be entirely destroyed and something substituted for it of a wholly different character and at greatly less value in security?

In view of these provisions of the statute and the foregoing considerations, the case resolves itself, therefore, into two questions:

(a) Can it be said, under any reasonable rule or interpretation, that the contract made with the City of Detroit contains an agreement upon the part of the grantee thereof and its successors and assigns that if in the exercise of the power conferred upon street railway companies to acquire other railroads, and the rights, privileges and franchises that are pertinent thereto, that the right to enjoy those rights, privi-

leges and franchises in the same manner and to the same extent as the selling company might have done had it remained in ownership, that such railroad should be operated at the rate of fare and upon the terms and conditions contained in the city grant, and that the rights conferred by the township and village grant are swept away, and that thereafter such purchased railway shall be operated under the terms of the city grant?

(b) What is the force and effect of the Annexation Act of 1907, standing alone, if any, upon the contracts between the Township of Grosse Pointe and the Village of Fairview, on the one hand, and the grantees on which the same was conferred, on the other hand, and if a proper interpretation of the language used in that Act indicates an intention upon the part of the Legislature to repeal or amend or revoke the whole or any part of those contracts, would not the Act, to that extent, be in violation of the provisions of the Federal Constitution prohibiting the enactment of any law by any State impairing the obligations of a contract and prohibiting any State from depriving any person of his property without due process of law?

In this connection we assert that the rule to be applied is that such result must be clearly and unmistakably and intentionally found from the language of the city contract, and should not be drawn from doubtful language or by strained and unnatural construction.

The words of the original grants, "shall not exceed five cents in any one car, or on any one route named in this ordinance," and the words of the eight for a quarter ordinances, "over any of its lines in said city" and "over the entire route of said company, or any portion thereof," are incapable of the construction placed upon them by the Supreme Court of Michigan, that they were intended to apply to the then territorial limits of the city and to any extensions thereof that might subsequently take place, or to any lines or railways built and operated by other companies on grants and contracts made by and with other municipalities outstanding and in force at the time of the annexation of the territory in which they were built. Suppose the company should take a new grant for a railway within the city limits which contained conditions and a rate of fare different from the old one, would any person claim that the old contract would control the interpretation of the new one?

1. The street railway laws of Michigan preclude any such construction.

The Tram Railway Act of 1855 required the articles of association to state the termini of the proposed road and "its length as near as may be."

In 1867 this requirement was amended to read, "in such streets or public ways of the particular city as has been or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities."

The Street Railway Act of 1867 reads: "In and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent."

Under these statutory provisions the grants were necessarily of specific portions of the public streets, and when additional territory was annexed to the city a street railway company was not authorized to extend its line into the annexed territory.

2. The practical construction was in accord with the statutes.

Thus, when the eastern limits of the city were extended on Jefferson avenue from Mt. Elliott avenue to 200 feet east of Baldwin avenue, the Common Council authorized a like extension of the street railway.

The obvious meaning of the statutory provisions, and the practical construction being in accord, there can be no doubt but that the grants and contracts in question did not apply, were not intended to apply, and never did apply to subsequently annexed territory.

3. The construction given these contracts by the Supreme Court of Michigan brings the city grants and contracts into direct conflict with the grants and contracts previously made by the townships and villages whose territorial limits are encroached upon by annexation acts.

The township and village one-fare zones are reduced in length and the inhabitants of the unannexed portions of the townships and villages, as well as the street railway company, are deprived of a part of their contract rights.

These local grants and rates of fare are inviolable contracts.

Detroit vs. Detroit Citizens' Street Railway Co., 184 U. S., 368.

And it is difficult to understand how a contract between the city and a street railway company can rightfully impair a contract between a township or village with another street railway company.

The Supreme Court of Michigan disposes of this very vital question with the unwarranted assertion that the rights of the townships and villages are not involved in this litigation.

4. As a matter of fact, the township and village contracts in this case were not made with any *city* street railway company.

The original contracts of the City of Detroit and the eight for a quarter contracts were with the Detroit City Railway, and the township and village contracts were with the grantees who organized the Jefferson Avenue Railway.

The ownership of all the city, township and village contracts became united in the Detroit United Railway. Such a result was permitted under the express provisions of Section 15 of the street railway law, under which it was organized, it "may use and enjoy the rights, privileges and franchises of such company, the same and upon the same terms as the company whose road and franchises were so acquired might have done." This provision clearly contemplated that the same company could acquire and own several grants containing different conditions, all of which should remain in full force and effect.

A municipal contract which at the time it was made was designed to apply to certain specific lines of street railway which did not extend beyond the then territorial limits of the municipality cannot rightfully be held to apply to certain other street railways which were within territory subsequently annexed to the municipality.

The Supreme Court of Michigan holds that the contracts in question in this case were intended to apply to the whole City of Detroit, whatever the territorial limits of the city might be; but there is not a word in the contracts, or a fact in their subject-matter, the relations of the parties, or their attitude towards each other, which indicates or even suggests any such intention.

On the contrary, as we have shown, the language used, and all the surrounding circumstances, negative any such intention.

Only two of the cases cited in the three opinions of the Supreme Court of Michigan have any bearing on the case, and they are plainly distinguishable.

All the other cases cited relate to ordinances establishing police regulations, with no elements of contract of any kind.

In the case of *Indiana R. Co. vs. Hoffman*, 161 Ind., 593, the grant made by the city of South Bend for a street railway within the city, and the grant made by the County of St. Joseph for a street railway between the eastern limits of South Bend and the western limits of the town of Mishawaka were both made to the General Power & Quick Transit Company. The city grant provided for transfers "free of charge," the county grant did not.

The city grant to the South Bend Railway Company provided for transfers. The city grant to the South Bend & Mishawaka Railway did not provide for transfers.

All these street railways were acquired by the Indiana Railway Company, and, *after* acquiring the same, that company entered into a contract with the city of South Bend, in which it agreed

"to issue transfer tickets free of charge to all passengers requesting the same who boarded its cars at any point upon its line within the limits of South Bend, and whose destination might be upon any other line of the company's road within said city limits."

In the case before the court it appeared that a transfer had been issued to a passenger within the city of South Bend, which the company refused to honor in the one-half mile of annexed territory.

The court held that

"it may be presumed that appellant, under its contract, whereby it agreed to issue the transfer tickets within the city limits, must have contemplated that the city, in the future, might exercise the right of annexing territory and thereby extend its limits. Upon no view of the case can the provision, 'within the limits of the city,' be interpreted to have been intended, under the agreement embraced in the proposition made by appellant, to apply only to the limits as then fixed."

The court disposed of the contract rights of the company under the grant from the County of St. Joseph as follows:

"But whatever rights appellant had in said territory under its grant from the board of commissioners were not impaired or destroyed by the extension of the city boundary in question, but were changed by its agreement with the city to issue transfer tickets over its lines therein to all points within the city limits. Whatever rights it had to decline or refuse to issue transfers to persons carried over its road in said territory were merged in and controlled by the contract which it subsequently made with the city. If appellant desired to stand upon and avail itself of the rights which it had acquired in the territory in question, it ought not to have entered into the agreement and contract with the city in regard to the rate of fare and the right of passengers to transfer."

The Detroit United Railway never made any such contract with the City of Detroit.

Patterson vs. Tacoma R. & Power Co., 60 Wash., 406, is of the same nature as the Indiana case, with the difference that the whole of the Village of Fern Hill was taken into the city, and the county franchise was held to have been abrogated by a "peace" contract the city and the company had entered into, which required the company to

"transport any person from any point or place within the corporate limits of the City of Tacoma on any line or lines of street railway owned, operated or controlled by said party of the first part," etc.

Here we wish to call the attention of the court to a case in Massachusetts and a case in Canada.

Turners Falls Fire Dist. vs. Millers Falls Water Supply Dist., 189 Mass., 262, is a case where the Fire District made a contract with the Water District to supply it with water. The Legislature extended the territory of the Water District into an adjoining town. Knowlton, C. J. for the court, said:

"While the pecuniary interests of the taxpayers may be affected to some extent by legislation of this kind within the limits of constitutional authority, it is at least very doubtful whether the Legislature could constitutionally increase the contractual obligation of a

quasi-municipal corporation which had agreed to furnish water to another similar corporation by extending the boundaries of the latter into another town, and providing that the contract should apply to the additional territory. Const. U. S., Art. 1, Sec. 10. Without intimating that the statute before us would be constitutional if it made such a provision, we are of opinion that it was not intended to affect the rights of either party under the contract. It contains no reference to the contract, and there is nothing in it to indicate that the Legislature had any knowledge of the contract. If it were intended to change the contract and put an additional burden on the plaintiff, we should expect to find a plain provision to that effect."

The Toronto Railway Co. vs. City of Toronto, 37 Canada Supreme Court Report, p. 430; affirmed by the Privy Council, House of Lords, Appeals Cases, 1907, p. 315, is a case where the street railway company and the city had entered into a contract (which had been validated by the provincial parliament), and the question presented was whether under the agreement the company was compelled to lay down new lines in territory annexed to the city after the date of the agreement.

Held, that the right of the city to determine, decide upon, and direct the establishment of new lines of tracks and tramway service applied only within the territorial limits of the city as constituted at the date of the contract.

In the Supreme Court of Canada, Sedgewick, J., at p. 434, stated the rule of construction to be applied to the case as follows:

"In construing an instrument in writing, the court is to consider what the facts were in respect to which the instrument was framed and the object as appearing from the instrument, and taking all these together, it is to see what is the intention appearing from the language when used with reference to such facts and with such an object, and the function of the court is limited to construing the words employed; it is not justified in forcing into them a meaning which they cannot reasonably admit of. Its duty is to interpret, not to enact. It may be that those who are acting in the matter, or who either framed or assented to the wording of the instrument, were under the impression that

its scope was wider and that it afforded protection greater than the court holds to be the case. But such considerations cannot properly influence the judgment of those who have judicially to interpret an instrument. The question is not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the parties if violence were done to the language in which the instrument has taken shape; but such a course would, on the whole, be quite as likely to defeat as to further the object which was in view."

Further on, at p. 436:

In my opinion the city clearly only purported to deal with streets within its jurisdiction. Outside municipalities into whose area the company might desire to extend its operations had independent powers in these respects, and the Act provides that with them the company could make separate arrangements; and without going in detail through the various provisions in the conditions, agreement and statute, it appears to me plain that by the special reference contained in Section 19, Sub-section 4, of the Act, the parties did not intend to provide for territory subsequently annexed, and as to which the city, at the time, had no right to give any franchise or make any contract."

Idlington, J., at pp. 451-452, made the following comments, which have a direct application to the case we have in hand:

"When we look at the thing they are contracting about, the nature of the enterprise involved, the many uncertain factors in the operation of such a contract, even within a well known and defined area, and we reflect how much more complicated the contract must be if projected into the future possibilities that might arise in relation to any added territory, we seem to be forbidden to entertain the thought that any such contracting parties could have intended to apply the terms agreed upon for thirty years to territory over which neither party had any domain or any security for the future condition thereof in any regard, and especially in regard to the value thereof for the purpose of constructing therein or extending therein a system of street railway.

"We must bear in mind that the keynote of this contract is an exclusive right for thirty years. We must

also bear in mind that whilst the city could assure the company in regard to the exclusive right within the then existing boundaries that there was no power that could exclude any other railway system from existing or coming into existence in what was likely to become part of the territory to be added in course of time to the city.

"Ambitious suburban towns might spring up with municipal powers enabling them to construct such railways and form such alliances in regard to the transportation of their own people not only through and about their own town, but to do business with and in the center of the greater town. We might find existent railways, at the time this contract was executed, which in all probability would grapple with the situation and make accessory to their business the entire travel of suburban towns. The chances were entirely, one would say, in favor of such development, rather than that the territory to be occupied by these suburban towns would remain and be in regard to railway service, for years before and at annexation, like a blank sheet of paper to have written over it the policy of the City of Toronto in relation to street railways.

"To assume that such adjacent territory might possibly, within thirty years, be annexed might be reasonable; but to assume that it would be annexed in the same plight and condition in every way in relation to the development of street railway business as when this contract was entered into, is something that the common knowledge of anyone living upon this continent with observant eyes is unlikely to believe was assumed."

Lord Collins, delivering the judgment of the Privy Council, said:

"The reasons given in the judgments of Sedgewick and Idlington, J.J., with whom Davies, J., concurred, seem to their Lordships so full and satisfactory as to make it unnecessary to say more than that they adopt and agree with them. The injustice involved in the contrary view, which would enable the corporation to compel the railway company to extend their lines at an indefinite expense, and for indefinite distances where the maximum fare chargeable for any distance is five cents, seem to their Lordships insuperable."

The fundamental error in the decision of the Michigan State Supreme Court on this point lies in the proposition that it

was the intention of the parties to the city grant that it should supersede those of another contract of equal legal dignity and import, under the protection of which the grantees had expended large sums of money in the construction of an independent railway which had not been made when the city contract was made, and which, when made, fixed terms and conditions wholly at variance with those of the city contract. In the absence of an express agreement or necessary implication to the contrary the scope of the city agreement must be limited to lines constructed thereunder, otherwise the powers and rights conferred by Sec. 20 of the Street Railway Act are of no value and furnish no protection.

Suppose that instead of purchasing the suburban railway with all the contract rights appurtenant thereto, the respondent had, as it could have done, taken a lease thereof in which the rent reserved to the lessor was twenty per cent. of the gross earnings based on the rate of fare fixed by the township grant. Under such conditions what would the effect of this annexation act have been on the rights of the parties to the lease?

II.

By Section 20 of the Street Railway Act, above quoted, it is provided that, "The rates of toll or fare which any Street Railway Company may charge for the transportation of persons or passengers over their road shall be established by agreement between such Company and the corporate authorities of the city or village where the road is located, and shall not be increased, without consent of such authority."

We thus see that the legislature has conferred upon the municipality and the Company the power to fix rates of fare, and that it has the constitutional right to do so is not questioned. There is no constitutional provision in Michigan prohibiting the legislature from conferring this authority upon a municipality, and therefore, it is held, without any conflict of authority, that when the legislature has conferred such power upon the municipality and the Company, and the municipality and the Company have acted thereunder, and have fixed the rates of fare, a binding contract has been created which cannot be revoked or impaired either by the municipality or the legislature.

This is the view expressed in Dillon on Municipal Corporations, 5th Edition, paragraphs 1325, 1326. In support of the doctrine stated in the text, the learned author cites in the note to paragraph 1326, an extended list of authorities. Among the authorities cited is:

Detroit vs. Detroit Citizens Street Railway Company,
184 U. S., 268.

In the above case this Court held that by express command of the legislature, under the provisions of Section 20, the fixing of rates was a matter of contract, and not a matter of legislation.

Walla-Walla vs. Walla-Walla Water Company, 172
U. S., 9.

Los Angeles vs. Los Angeles City Water Company,
177 U. S., 558.

Freeport Water Company vs. Freeport, 180 U. S.,
587.

Detroit vs. Detroit Citizens Street Railway Company,
184 U. S., 268.

Vicksburg vs. Vicksburg Waterworks Company, 202
U. S., 453.

Home Tel. & Tel. Company vs. Los Angeles, 211 U. S.,
265.

Omaha Water Company vs. Omaha, 177 Federal Re-
porter, 1.

Bessemer vs. Bessemer City Waterworks Company,
152 Alabama, 391.

Leadville Water Company vs. Leadville, 22 Colo., 297.

Shreveport Traction Company vs. Shreveport, 122
La., 1.

So, relying upon the decisions of this Court, and other courts in the cases cited by the learned author of Dillon on Municipal Corporations, we respectfully submit that if the Act of Annexation is to be given force and effect of extending the city rate of fare under the terms and stipulations of the city contract with the railroad company to the annexed territory, with the effect of destroying the terms of the contract under which the road was built in the annexed territory, it clearly violates the prohibition of the Federal Constitution against the impairment of contracts.

It does not seem to be necessary to refer in greater detail, and to argue at greater length this proposition, as in one form or other the question of the binding effect of these muni-

cial contracts, made in the exercise of express authority of the legislature, has been before the Court so often, and their irrevocable character determined, that the doctrine has become generally accepted, and has been generally followed.

As pointed out in the Detroit case, 184 U. S. 268, such is the declared doctrine in Michigan.

A grant created by such a contract is a valuable property right; the stability of which is necessary to the successful promotion, maintenance and operation of enterprises of this character, as is pointed out in the Detroit case above referred to.

It is submitted with confidence that there is a clear distinction between a case where new territory is added to the city, and rights are acquired, and roads built, prior to such annexation, and those cases where the annexed territory may be said to be virgin ground, and the question is raised as to the rights of companies operating in the city, extending their operations to the new territory.

The status of the railroad already constructed in the new territory covered by the Act of Annexation, is fixed by the terms of the contract under which it was constructed and operated; and if the legislature would undertake in express terms to enact that the terms under which railroads within the former limits of the city occupied and used the public streets should thereafter be in force and apply to all railroads owned by the same company in the newly annexed territory, and should, by force thereof supersede the terms and conditions under which the railroads in the annexed territory had, prior to the annexation constructed and operated, such legislation would be clearly in violation of the impairment clause of the Federal Constitution, and within the decisions cited by Judge Dillon. If the legislature could substitute one contract for the other as to rates of fare, it could also substitute, in like manner the provisions of the city contract as to the duration of the term for which the grant was made. One is as clearly within the protection of the Federal Constitution as the other. It has been repeatedly held by the courts that the term for which the railroad company might occupy the street is as vital and a substantial part of the contract or grant as the rate of fare and that to permit the legislature to interfere with it would be to place enterprises of this character in the hazardous position of being liable to have its invest-

ment wholly destroyed, if legislative interference in this regard would be permitted.

The authorities are clear on this proposition.

That the State Supreme Court intended to hold, and did hold that the Act of Annexation had the effect of extending the local city contract into the new territory, and thereby substituted it for the contract already in existence, appears from its decision on the rehearing of this case (R., pp. 46-47). They there say:

"The following authorities support the proposition that a municipal ordinance, regulation, or contract, designed for a city at large, operates throughout its boundaries, whatever their change.

McQuillin Municipal Ordinances, Sec. 218.

Dillon Municipal Corporations (4 ed.), Sec. 185.

Citing

St. Louis Gas Company vs. St. Louis, 46 Mo., 121.

Toledo vs. Edens, 59 Iowa, 352.

"In *St. Louis Gas Company vs. St. Louis*, above cited, which involved the amount due the company for gas furnished the city in its enlarged boundaries, the court said: 'The additional orders for lamps were all to be within the city, and the city is a unit, though with changing boundaries. There might be a question as to the extension of the exclusive rights of the plaintiff, for grants of monopolies are to be strictly construed; but there is no doubt that a city ordinance, or a city contract, designated for the city at large, operates throughout its boundaries whatever their change.'

"In *Toledo vs. Edens*, it is said: 'If an ordinance be enacted and afterwards the city limits be extended by adding thereto adjacent territory, no one would contend that a new ordinance must be passed in order to be operative in the newly acquired territory.'

"It is true that that case involved a police regulation, but the authorities cited seem to make no distinction between such a regulation and an ordinance or contract relating to traffic regulation."

There can be no question but the contracts between the Township of Grosse Pointe and the Village of Fairview on the one part, and the Railroad Company on the other, and the contract between the City of Detroit and the Railway

Company are of equal dignity and legal signification; and that the fact that there is unity of title does not destroy the right of the Railroad Company to have both maintained unimpaired and enforced. To hold otherwise is to hold that a railroad company could not own two separate lines of railway in the same municipality upon terms and conditions at variance with each other. Suppose after the contract of 1889 providing for so-called workmen's tickets had been made by the Railway Company and the City, a further contract should have been made under which another line of railway was constructed, such new contract being complete in its terms in all respects and should provide as follows: The rate of fare for a single ride on the line of railway hereby authorized for any distance shall be five cents; could it with reason be held that the railway company would be bound to extend to the new line of railway the provisions of the contract applying to the older system requiring the transportation of people on what is known as workmen's tickets? We think such a view could not be sustained either by reason or authority; and it is respectfully submitted that there is no difference between the case just supposed and the case actually before the Court.

III.

The complaint in this case is based upon the provisions of Exhibit M in form, but in fact the purpose is to compel compliance with subdivision D of Section 4 of Exhibit M. This subdivision contains the terms of the agreement for carriage of passengers between 5:30 o'clock and 7:30 o'clock in the morning and 5:15 o'clock and 6:15 o'clock in the afternoon, over any of grantee's lines in said city, for a single fare, at the rate of 8 tickets for 25 cents, one continuous trip. The right of transfer mentioned has no relation to the subject in controversy, and in fact simply provided for a transfer from certain named routes to certain other named routes in the city. Exhibit M is a purely regulatory ordinance, does nothing but require the sale of 8 for a quarter tickets on the cars, and is not intended and does not in any sense extend the obligation of the company, so far as the right of the passenger to a ride is concerned. It merely facilitates the purchase of the tickets by providing that they shall be for sale on each car. Exhibit M was first enacted in 1893, and assumes to require the Detroit City Railway, its successors and assigns, to comply with the terms of the ordinance. At the date of its enactment the Detroit City Railway was not in

existence, and neither owned nor operated any street railways in Detroit. It appears from the record (pages 8 and 34) that it conveyed all of its railways, franchises, rights and privileges on the 1st day of December, 1890, to the Detroit Street Railway Company, which latter company on the 16th day of December, 1901, conveyed all of its property, including that which it acquired from the Detroit City Railway, to the Detroit Citizens Street Railway Company, and after its conveyance the Detroit City Railway ceased to do business; and at the time of the enactment of the ordinance the Citizens Company was actually in possession and actually operating all of the former Detroit City Railway lines. The Suburban Railway constructed under the Township of Grosse Pointe and Village of Fairview grants, which had finally become the property of the Detroit Suburban Railway Company, was never conveyed to either the Detroit City Railway or the Detroit Street Railway Company or the Detroit Citizens Street Railway Company, but it remained an independent line and company until conveyed to the Detroit United Railway December 31, 1900. It thus appears that as to this Suburban Railway, the Detroit United Railway was not the successor and assign of the Detroit City Railway or of the Detroit Street Railway Company or of the Detroit Citizens Street Railway Company. Therefore none of the obligations contained in Exhibit L, and imposed upon the Detroit City Railway and its successors and assigns, can be said to have any reference whatever to or become a part of the obligations and duties imposed upon the Suburban Railway Company by reason of assignment or successorship in title. And if the obligations contained in Exhibit M are to be super-imposed upon the Suburban Railway, it can only be because of the final acquisition of both railways by one company.

It is therefor clear that the substitution of the terms of Exhibit L for the terms and conditions of Exhibit A (the township grant) can only be brought about by force of the statute of annexation, and the entire disregard of the rights and powers conferred by section 20 of the street railway act. To do this two things must clearly appear: (a) That the parties making the contract contained in the city grant, Exhibit L, will be presumed to have intended that the railway company owning the railroad operated under the terms of Exhibit L, should not own or operate any other railway, no matter how acquired, upon other or different terms in any territory which might thereafter be brought within the limits of the City of Detroit, even though the other railway had been constructed and operated upon different terms and conditions

and the title thereto acquired long before the territory in which it was constructed was annexed to the City of Detroit. (b) It must be further found that the legislature intended in annexing that territory to extend the terms of the city contract over the railways already constructed and in operation in the annexed territory, thereby in effect repealing the terms of the grant under which the Suburban Railway was constructed.

The principle upon which the state court goes in regard to these propositions is that the parties to the contract, Exhibit L, must be held to have made that contract with the understanding that at some time or other the legislature of the State might extend the city limits so as to include within the city limits territory upon which a railway had already been constructed, on terms and conditions fixed by the municipality having jurisdiction over that locality, and that in making such extension, its force and effect would be to destroy the terms of contract under which the suburban line was constructed, and to substitute therefor terms and conditions wholly different.

We hardly know how to characterize this result. It is so easy to say that parties entering into a contract must have had in contemplation the possible exercise of authority by the legislature without there being any justification for such a statement, and yet it may be very difficult to show that such assumption is unwarranted. I know of no safe rule by which we are to judge or act under such circumstances except to search the contracts and find if there is anything in the language of the contracts which indicates that the parties had any such result in view, or should have had any such result in view. Considering the matter from this point of view, it is quite clear to us that there is no justification whatever, from anything appearing in this record, for an adjudication depriving the respondent of substantial rights, and the protection of the provisions of section 20 of the street railway act.

If it is claimed that the ordinance of 1893, Exhibit M, imposes any obligation upon the railway company, with reference to the carriage of passengers, greater than that imposed by the terms of Exhibit L, then we say that to that extent it is invalid. It was not accepted by the railroad company, and recently the Supreme Court of the State has held that the city cannot, by a mere legislative enactment, impose terms and conditions of this character. That court has declared that the power of the city to deal with the street railway question

is purely contractual, and requires the assent of the railway company.

We respectfully submit that the judgment of the Supreme Court of the State and of the Recorder's Court of the City of Detroit must be reversed and the complaint dismissed.

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Counsel for Plaintiff in Error.



Supreme Court of the United States.

THE DETROIT UNITED RAILWAY,
Plaintiff in Error,

VS.

THE PEOPLE OF THE STATE OF
MICHIGAN.

No. 161.

THE SAME

VS.

THE CITY OF DETROIT.

No. 921.

MEMORANDUM OF ARGUMENT.

These cases both come up on writs of error allowed by the Chief Justice of the Supreme Court of Michigan to review decisions of that Court.

Both cases depend upon the same facts and in different ways raise the question of the right of the plaintiff in error to charge certain rates of fare upon a street railroad in territory formerly part of the town of Grosse Pointe, adjacent to the City of Detroit on the east but now annexed to the City of Detroit by an act of the Michigan legislature; and

also to charge certain rates of fare upon a street railroad in territory formerly part of the town of Greenfield, adjacent to the City of Detroit on the west but now annexed to the City of Detroit by an act of the Michigan legislature. In the first case, No. 161, the question was raised by criminal prosecution and the imposition of a fine for refusal to carry passengers for a less rate of fare than the railway company claimed a right to charge. In the second case, No. 921, the question was raised by writ of peremptory mandamus to require the railway company to carry passengers at such less rate of fare.

For convenience the references in this memorandum to the record are all made to the record in the mandamus case, No. 921.

1. The plaintiff in error is a Street Railway Company incorporated December 28, 1900, under the Michigan Street Railway Act of 1867. (See Revision of 1915, p. 165.) On that day there were in existence four distinct street railways in Detroit and the neighboring towns owned and operated by three different companies under different grants. These were:

(a) A railway in the towns adjacent to Detroit on the east owned and operated by the Detroit Suburban Railway Company under grants from the town and village of Grosse Pointe.

(b) A railway on Jefferson Avenue in Detroit extending from the Westerly terminus of the Grosse Pointe road to the "Campus Martius" in the Center of Detroit. This was owned and operated by the Detroit Citizens Railway Company under grants from the City of Detroit made to a former corporation known as the Detroit City Railway Company.

(c) A railway on Grand River Avenue extending from the "Campus Martius" to the Westerly city limits owned and operated by the Detroit Citizens Railway Company under grants from the City of Detroit, to the Grand River Street Railway Company.

(d) A railway extending from the city limit on Grand River Avenue in a Westerly direction through the adjoining towns owned and operated by the Detroit and Northwestern Railway Company under a grant from the town of Greenfield.

2. Each of these four railways was held and operated under its own separate franchise and under provisions of its particular grant amounting to a contract respecting the amount of fare to be charged (under the rule laid down by this Court in *Detroit vs. Detroit Citizens Street Railway Company*, 184 U. S. 68).

(a) The contract relating to fares on the Grosse Pointe road, owned by the Detroit Suburban Railway Company, is to be found in the grants of

March 13, 1891. Record, pages 78, 89.

April 8, 1891. Record, pages 87, 88.

April 17, 1893. Record, pages 80, 82.

August 9, 1895. Record, page 84.

(b) Contract as to fares on the Jefferson Avenue road, owned by the Detroit Citizens Railway Company, in the grants dated,

November 24, 1862. Record, pages 42, 46.

November 14, 1879. Record, pages 55, 56.

March 3, 1889. Record, pages 58, 61, 63.

(c) Contract as to the Grand River Avenue Road, owned by the Detroit Citizens Railway Company, grants of

March 1, 1868. Record, pages 9, 12.

January 3, 1889. Record, pages 17, 18.

3

(d) Contract as to the railroad in the town of Greenfield, owned by the Detroit and Northwestern Railway Company, grants of November 1, 1897. Record, pages 38, 40.

3. Within a few days after its incorporation and on or about the 31st of December, 1900, the plaintiff in error made separate purchases of each of these railroads and the franchises under which they were operated from their respective owners. The purchases were made under the authority of Section 15 of the Michigan Street Railway Act of 1867 (see p. 171, revision of 1915). The Section provides as follows:

"Any street railway company may also purchase or acquire, either at public or private sale, whether judicial or otherwise; or may hire any street railway in any city, village or township owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain, and complete such road, and may use and enjoy the rights, privileges and franchises of such company in the same manner and upon the same terms as the company whose road and franchises, so acquired, might have done."

4. Nobody has ever disputed or now disputes the right of the several companies owning these different railroads up to the time of the sale to the plaintiff in error in December, 1900, each to operate its own railroad in accordance with the terms of its own franchise grant, charging the rate of fare authorized thereby. No one has ever disputed or apparently now disputes that by its purchase from each company the plaintiff in error acquired the right to maintain and operate the railroad of that

company with the same rights in respect of fares which its grantor had; and the plaintiff in error continued for a series of years until after the annexation of 1907 to operate each of these roads, charging upon each the fares provided by the franchise under which the road was maintained and operated.

Opinions, Record, pages 101, 120.

5. May 16, 1905, the village of Fairview, which had recently been incorporated, covering a portion of the township of Grosse Pointe, made a new grant, with some special stipulations, to the plaintiff in error, confirming its right to maintain and operate the Grosse Pointe Railroad through the village and containing a stipulation as to fare substantially identical with the preceding stipulation in the grants from the town and village of Grosse Pointe (Record, pp. 91, 93).

6. June 19, 1907, the legislature of Michigan by statute annexed to the City of Detroit a portion of the territory of the town of Greenfield traversed by the railroad operated under the grant from that town, and October 24, 1907, the legislature annexed to the City of Detroit a portion of the territory of the town of Grosse Pointe and of the village of Fairview traversed by the railroad constructed and operated under grants from the town and its villages.

These statutes appear in full annexed to the brief of the defendant in error, pages 27 and 29.

Because of the effect of these statutes converting territory traversed by the railroads operated under the township grants from territory of the towns to territory of the City of Detroit, the defendants in

error deny the right of the plaintiff in error to continue to charge fares within that territory in accordance with the franchise grants under which the roads were constructed as it had theretofore done by unquestioned right, and it is for insisting upon that right in that territory since the statutes were passed that the plaintiff in error has been convicted in one case and mandamused in the other.

7. The reason why the annexation of territory is claimed to deprive the plaintiff in error of its right to collect fares on the railroads constructed under township grants in accordance with those grants is supposed by the defendant in error to be found in a contract contained in the grant to the Detroit City Railway Company made November 24, 1862, and March 3, 1889.

Record, pages 42, 46.

Record, pages 58, 61, 63.

It is claimed and the Court below held that this grant included a contract under which the Detroit City Railway Company bound itself to carry passengers over its entire line for a single fare of five cents and to sell tickets within specified hours good for such passage over its entire line at the rate of eight tickets for a quarter of a dollar, and it is said that that contract must be deemed to have been made with a view of future extensions of the City of Detroit so that it applies to the annexed territory.

8. The plaintiff in error has made no contract whatever with the City of Detroit. No person or corporation owning the township railroads or the franchises thereof has made any contract with the City of Detroit.

The sole relation of the plaintiff in error to the contract contained in the grant to the Detroit City Railway Company is as the purchaser of the property the use of which was burdened by conditions created in that contract. The plaintiff in error is not the corporate successor of the Detroit City Railway Company. It has no concern with any personal contracts of that corporation. Under the statute of 1867 the relation of a purchaser of property to the vendor is that of a separate, distinct, opposed person having no personal relations to the vendor whatever.

9. The contract in the Detroit City Railway grant must be read as of the time when it was made. The words used are to receive effect as used by the then existing parties who made the contract. The subject matter of the contract is to be ascertained by reference to the position of those original parties in the year 1889. The question is, "What burden was in the year 1889 imposed by the consent of the Detroit City Railway Company upon the use of the franchises which this plaintiff in error has purchased from the grantee of that company?" Whatever that burden was, the plaintiff in error must endure so long as he continues to use those franchises.

10. Upon an examination of the ordinance containing the grant of March 3, 1889, to the Detroit City Railway Company (Record, pp. 58, 61, 63), keeping in mind of course the original grant of 1862, it is plain at the outset that the subject matter of the contract was the fare to be charged for passage over the lines of the Detroit City Railway Company and those lines only. The contract did not deal with and its words did not relate to any

other lines than those of that company. Its conditions were imposed upon no franchises whatever except the franchises under which those lines were operated or to be operated.

11. It is also plain that the contract was limited in its scope to the use of the particular franchises which the Detroit City Railway Company already possessed and the particular franchises which were granted to it by the ordinance of March 3, 1889. The contract related to nothing else than the use of the franchises which that company then had and which were then granted to it.

12. The railroad now owned by the plaintiff in error in the annexed portion of the old town of Grosse Pointe never was any part of the lines of the Detroit City Railway Company and the contract of 1889 has no relation whatever to that railroad.

The Detroit City Railway Company never had any lines in the annexed district; and the plaintiff in error derives no title to any railroad or to any franchise to operate a railroad in that district from that Company or under the ordinance of 1889.

Even if the Detroit City Railway Company itself had built the Grosse Pointe railroad under the Grosse Pointe charter that road would not have been brought under this contract of 1889 because that contract related only to the use of franchises then or theretofore granted by the City of Detroit.

13. It is said that the Common Council in 1889 must be deemed to have contracted in view of the probable extensions of the territory of Detroit. A vague expression of that kind decides nothing. This contract was not about territory. It was about the

use of railroad lines and franchises and it happens that no such lines as the contract related to have ever been built and no such franchises as the contract related to have ever been used in the annexed territory.

The suggestion, however, is not only irrelevant to this controversy; it is unsound. The sole basis of the application of that observation to the transaction which I am now discussing is found in the fact that the grant in the ordinance of March 3, 1889, of a franchise to build a railroad on Jefferson Avenue in the City of Detroit was to build "to the Easterly limits of the city", and it is suggested that that means not to the limits of the city as they were when the contract was made but to the limits as they might at any time in the future be made by subsequent legislation. This view is wholly inadmissible.

(a) If the Detroit City Railway Company had ever come into court claiming the right to lay down tracks under such a construction of the grant of 1889 it would have been defeated immediately by the application of the established rule that municipal grants are to be construed strictly against the grantee. There cannot be a different rule now. The construction of a grant cannot depend upon the question as to who brings it into court.

(b) The City of Detroit had no power or authority to make any grant extending beyond the city as it was at the time. It had no jurisdiction over the territory of the town of Grosse Pointe or the territory of the town of Greenfield. If it had made a grant it would have been *ultra vires* and void. No construction can be placed upon the words used by it in a contract in 1889 which would accomplish such a result.

(c) The Common Council of the City of Detroit had no power or authority to bind any future common council in relation to a grant of a franchise in any territory that might thereafter be annexed to the City of Detroit. They could not preclude the city authorities in office at such future time as the annexation of territory might occur from exercising their discretion at that time to grant franchises in unoccupied streets of the annexed territory to any one they chose and upon such terms and conditions as they chose. It follows that the terms used in 1889 granting the right to build to the Easterly city limits cannot be construed as carrying either a grant or a right to have a grant in the future in any annexed territory.

(d) The ordinance contains affirmative evidence that the parties did not consider a grant to the city limits as applying to future annexed territory, for the original grant to the Detroit City Railway Company of 1862 was a grant to the Easterly city limits. Between 1862 and 1889 there had been an annexation of territory on the east and the ordinance of 1889 contained a new grant of a right to build through that annexed territory.

(e) The ordinance contains further evidence that it was not intended to carry a grant in future acquired territory because Section 2 of the ordinance requires the track authorized to be laid to the Easterly limits of the city to be constructed and in operation within six months of the date of the passage of the ordinance. That requirement applies to the whole grant on Jefferson Avenue and of course the grant subject to that provision was not a grant extending into territory not then within the jurisdiction of the city but which might at some indefinite future time by new legislation be transferred to that jurisdiction.

14. The whole idea of superseding the franchises found in existence in the newly annexed territory by means of this old Detroit City Railway contract is fanciful and unsubstantial. It is a natural enough reaction from the possible inconvenience which the city authorities experience in finding that the newly annexed territory is already traversed by railroads maintained and operated under franchise grants the terms of which are not altogether to their liking.

It can be sustained only by vague and indefinite expressions and does not stand the test of definition of rights.

15. The same considerations are fatal to any claim which may be based upon the terms of the grant to the Grand River Street Railway Company and the same conclusions which follow as to the continued right to use the railroad in the old town of Grosse Pointe on the east apply to the continued right to use the railroad in the old town of Greenfield on the west.

16. The learned judges in the courts below have confused the effect of legislative ordinances which are effectual throughout the extent of a municipality however much its area may be extended, and contracts relating to specific subject matter which are operative only in relation to that subject matter. They have also fallen into the error of assuming that when the grantee of a franchise has burdened that particular property with stipulations as to its use and then has sold the property to a third person who owns other property the obligation of those stipulations becomes enlarged and extends to all other properties owned by the pur-

chaser as if the purchaser had made the stipulations with reference to all the different properties which it owns.

17. Something is said in the pleadings of the defendants in error and in the opinions below to the effect that these railroads constructed and maintained under different franchises have been operated as one route. They are connecting roads and they have always had running arrangements with each other as well when they were in the hands of different owners as now when they have come into the hands of the same owner. That no more affects the rights existing under the separate franchise grants of each particular railroad than the rights of the Pennsylvania Railroad Company and the Southern Railway Company upon their respective roads are affected by the fact that through trains pass to and fro over both roads through the City of Washington.

18. This is a typical case for the exercise of the jurisdiction of this Court under a long series of decisions, and argument about it would be an unjustifiable waste of the Court's time. Before the Annexation Act there was an undisputed right resting in contract. Because of the Annexation Act the exercise of that right is prevented. That is the effect given to the act. The judgments below rest on the act. Without it they would not and could not have been rendered. It is sought to justify giving that effect to the act by a construction put upon the contracts said to exist between the parties. If that construction is wrong then the effect given to the act impairs the obligation of our contract. It is elementary that this

Court has jurisdiction to determine for itself whether that construction is wrong or not.

Louisiana Ry. & Nav. Co. v. New Orleans, 235 U. S. 170.

St Paul Gas Light Co. v. St. Paul, 181 U. S. 147.

McCullough v. Virginia, 172 U. S. 102.

Mobile & Ohio R. R. v. Tenn., 153 U. S. 486, 492, 495.

New Orleans Water Co. v. Louisiana Sugar Co., 125 U. S., 18, 38.

Fisher v. New Orleans, 218 U. S. 440.

Hubert v. New Orleans, 215 U. S. 170, 175.

Carondelet Canal Co. v. Louisiana, 233 U. S. 376.

Given v. Wright, 117 U. S. 648.

Houston R. R. v. Texas, 177 U. S. 66.

Wilmington & Weldon R. R. v. Alsbrook, 146 U. S. 279.

Henderson Bridge Co. v. City of Henderson, 173 U. S. 592.

Douglas v. Kentucky, 168 U. S. 488, 502.

Yazoo R. R. v. Thomas, 132 U. S. 174.

University v. People, 99 U. S. 309.

Wright v. Nagel, 101 U. S. 791.

Bridge Proprietors v. Hoboken Co., 1 Wall. 116.

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SUBJECT INDEX.

	PAGE.
Statement of Case.....	1
Preliminary Statement	2
Plaintiff in error contends.....	5
Defendant in error contends.....	5
Propositions of law on the question of jurisdiction....	6
ARGUMENT	7
The Michigan Supreme Court bases its judgments solely on the meaning of the contracts existing between the parties.....	7
The decision of a State Court defining the meaning of a contract, without reference to a subsequent law, raises no Federal question.....	9
There is no denial of due process of law where, without violating some fundamental principle of law, a lawful tribunal in a regular way hears the parties and determines their rights.....	14
The Michigan Supreme Court correctly interpreted the contract between the parties.....	15
Conclusion	19
ADDENDA	20 20
Jefferson Avenue	20
Grand River Avenue.....	22 23
Assignments by street railway corporations.....	24 25
Annexation act of 1905 (Greenfield).....	25, 26, 27
Annexation act of 1907 (Greenfield and Ham- tramck).....	26, 27, 28, 29
Annexation act of 1907 (Fairview) ..	29, 30, 31, 32, 33, 34

LIST OF CASES REFERRED TO.

	Pages Where Cited
Blair vs. Chicago (201 U. S. 400).....	16
Central Land Co. vs. Laidley (159 U. S. 103).....	14
Charles R. Bridge Co. vs. Warren Bridge Co. (11 Peters, 420)	16
Chenango Bridge Co. vs. Binghamton Bridge Co. (3 Wall. 51)	16
City of Detroit vs. Ft. Wayne & B. I. Rly. (95 Mich. 456)	2, 21
Detroit City Rly. Co. vs. Guthard (114 U. S. 133)....	9
Detroit Tug & Wrecking Co. vs. Wayne Circuit Judge (75 Mich. 360).....	19
Fisher vs. New Orleans (218 U. S. 438).....	9
Geist vs. Detroit City Rly. (91 Mich. 446).....	18
Hamilton Gaslight & C. Co. vs. City of Hamilton (146 U. S. 258).....	16
Hammond vs. Johnson (142 U. S. 78).....	9
Henderson Bridge Co. vs. Henderson (141 U. S. 679) ..	9
Henderson Bridge Co. vs. Henderson (173 U. S. 592)	9, 12
Keokuk & H. Bridge Co. vs. Illinois (175 U. S. 626)....	11
Knox vs. Exchange Bank of Virginia (12 Wall. 379) ..	12
Knoxville Water Co. vs. Knoxville (200 U. S. 22)....	16
Lehigh Water Co. vs. Easton (121 U. S. 388).....	12
Missouri & K. I. R. Co. vs. Olathe (222 U. S. 187)....	13
Morley vs. Lake Shore & M. S. Rly. (146 U. S. 162) ...	14
Navigation Co. vs. Reybold (142 U. S. 643).....	9
New Orleans Water Works Co. vs. Louisiana Sugar Ref. Co. (125 U. S. 18).....	10
Newton vs. Commissioners (100 U. S. 548).....	11
People vs. Detroit United Rly. (162 Mich. 460).....	15
People vs. Quidder (172 Mich. 280).....	17
Southern Wisconsin R. Co. vs. Madison (U. S. Adv. Ops. 1915, p. 400).....	14
St. Clair County Turnpike Co. vs. Illinois (96 U. S. 63)	16
St. Paul, Minneapolis & Manitoba R. Co. vs. Todd (142 U. S. 282).....	9
Wilson vs. McNamee (102 U. S. 572).....	11
Yazoo & M. V. R. Co. vs. Adams (180 U. S. 41).....	13

SUPREME COURT OF THE UNITED STATES.

Detroit United Railway, <i>Plaintiff in error.</i>	}	October Term 1916. No. 1.
vs.		
The People of the State of Michigan,		
<i>Defendant in error.</i>		

Detroit United Railway, <i>Plaintiff in error.</i>	}	October Term 1916. No. 4.
The City of Detroit,		
<i>Defendant in error.</i>		

*In Error to the Supreme Court of the State of Michigan.
Files Nos. 22,377 and 23,496.*

BRIEF FOR THE DEFENDANTS IN ERROR.

(All references to the Record, except when otherwise stated, are to the Record in the second case.)

STATEMENT OF CASE.

The statement of the case made by the plaintiff in error in the first case is very argumentative, confusing and prolix.

As to the second case, we can see no reason in this controversy for so many of the references and recitals, and for this reason and with this apology would like to proceed as follows:

PRELIMINARY STATEMENT.

Two judgments of the Supreme Court of Michigan are here sought to be reviewed. The first arises out of convictions under ordinances of the City of Detroit passed in 1889 and 1893 requiring the sale and acceptance of workingmen's tickets on all cars operated within the city. A predecessor in title of the plaintiff in error questioned the validity of the ordinance of 1893 and on April 28, 1893, it was held valid.

City of Detroit vs. Ft. Wayne & Belle Isle Rly, 95 Mich. 456.

The second affirms the issuance of a writ of mandamus by which the company is required to carry passengers for these tickets and for the rate of fare fixed in the ordinance contracts with the city.

The plaintiff in error, in each case here sought to be reviewed, declined to give the service because the tickets and the single fare were demanded in territory not a part of the city when the agreements were made and the ordinances passed.

The agreements referred to were made in 1862 and 1868 with two different companies, both predecessors in title of plaintiff in error, and fixed the rate of fare on their lines within the city at five cents.

In these years, the territorial limits of the city were designated at certain points by the legislative act of 1857, and from time to time as the legislature saw fit, the city boundaries were changed and enlarged.

Amendments and additions were made to the original grants in years preceding 1889 and in 1889 and on subsequent dates. Under these the franchise rights in the streets were prolonged, additional lines and extended lines of railway were constructed and put in operation.

The legislature in 1885 had extended the city limits.

As to this controversy, the most important of these additional grants occurred in 1889. Under these, the com-

panies or predecessors in title of plaintiff in error agreed to carry a passenger "over any of its lines in said city" and "for a continuous trip from any point on the line of said railway to any other point on the lines of said railway for a single fare." These measures also provided for the use of the so-called workmen's tickets.

Subsequently, in 1891, the legislature further extended the city limits.

As early as 1873 and in subsequent years, various grants were obtained by street railway companies from the villages and townships surrounding Detroit. These instruments each provided for a rate of fare within the prescribed territory, and railways were built and put in operation in these villages and townships.

In 1900 the plaintiff in error by purchase became the owner not only of these village and township railways but of all of the railways within the city and made of the whole a single system. At this time the cars entering and leaving the city gave service over the same tracks and in the same cars to the residents of the townships and the city.

In this case we are concerned with two principal thoroughfares, Jefferson and Grand River avenues, and the cars on these streets were and are operated as one route.

With this condition in existence, the legislature in 1905 and 1907 again added to the limits of the city certain territory from the townships and villages where plaintiff in error was operating railways under grants made by the villages and townships and was collecting the fares designated in said various grants.

In 1909 the city contended that certain of the grants made by the city had expired, and an arrangement was effected by which the company was to continue the service from day to day on the same terms and conditions expressed in the grants.

At this time litigation was in progress to determine the rights of the parties under the original contracts as amended in this extended territory added to the city by the legislative acts of 1907.

It was and is the contention of the city that the original contracts, as amended, made with the city by the predecessors in title of plaintiff in error, entitled it to charge in the city, no matter what its limits might be, but a single fare.

It was and is the contention of the company that its contracts could not be given this meaning and that it was entitled to charge the fare in each strip of territory in accordance with the original franchise covering it.

There was an appeal to the court, and the city's position was sustained in

People vs. Detroit United Railway, 162 Mich. 460;

Detroit vs. Detroit United Railway, 173 Mich. 314.

In the first Michigan case the company was convicted

- (a) for its refusal to accept the workmen's tickets on its cars in the city as extended;
- (b) for its refusal to sell these tickets on its cars in the city as extended.

When the cases wherein the plaintiff in error was convicted reached the Supreme Court in 1910, the question there presented is stated in 162 Mich. 462, as follows:

"The question in each case is therefore whether the requirements of the ordinance of 1889, that passengers should be conveyed to any point in the city limits binds the defendant, as assignee of the Detroit City Railway Company, to transport passengers to the easterly limits of Jefferson avenue as extended, notwithstanding that the defendant company is the assignee of the franchise granted by Grosse Pointe township and approved by the village of Fairview."

When the second Michigan case reached the Supreme Court, that tribunal thus states the issue (173 Mich. 320):

"The question presented for determination is whether or not, outside of workmen's ticket hours, the rights to charge extra fares acquired by respondent under the Greenfield and Grosse Pointe grants are abrogated within existing city limits by the foregoing arrangement of 1909, construed with the original city ordinances of 1862 and 1868, fixing the rate of fare within the city limits, and the two city ordinances of 1889 relative to the Grand River Street Railway Company and the Detroit City Railway Company. Apparently the parties hereto do

not disagree as to their respective rights relative to rates of fare inside of or beyond the city limits, had those limits remained unchanged. The real contention arises over the effect of extending the city boundaries."

PLAINTIFF IN ERROR CONTENTS:

- (1). Its contracts with the city should not be given the meaning which the Supreme Court of the State of Michigan says they have.
- (2). If these contracts are given this meaning, the decision coupled with the legislative acts of annexation impairs the obligations of its contracts, contrary to Section 10, Article 1, Constitution of the United States, and deprives it of its property without due process of law, in contravention of the 14th amendment to the Constitution of the United States.

DEFENDANT IN ERROR CONTENTS:

- (1). There is no federal question here to be reviewed, and this Court is without jurisdiction.
- (2). The contracts of plaintiff in error were correctly construed by the Michigan Supreme Court.

This preliminary statement is here given in the belief that it sufficiently presents the facts for the argument on the question of the jurisdiction of this Court. The data from which it is taken will be found in the more detailed statement which follows, headed "Addenda," a reference to which might be necessary for a consideration of the case on its merits.

PROPOSITIONS OF LAW ON THE QUESTION
OF JURISDICTION.

- (1). The decision of a State court defining the meaning of a contract, without reference to a subsequent law, raises no Federal question.
- (2). The Michigan court bases its judgments solely on the meaning of the contracts existing between the parties.
- (3). There is no denial of due process of law where, without violating some fundamental principle of law, a lawful tribunal in a regular way hears the parties and determines their rights.

ARGUMENT.

In this argument we will slightly alter the order of the propositions of law as stated, and begin with the second proposition.

THE MICHIGAN COURT BASES ITS JUDGMENTS SOLELY ON THE MEANING OF THE CONTRACTS EXISTING BETWEEN THE PARTIES.

Mr. Justice Montgomery in concluding his opinion in *People vs. Detroit United Railway*, said:

“The case presented does not involve in this view an interference with any vested right of the company as assignee of the Fairview Railway.”

People vs. Detroit United Railway, 162 Mich. 460, 463.

Mr. Justice Stone in concluding his opinion rendered after the re-hearing of cause, said:

“We agree with Chief Justice Montgomery that the cases presented do not involve an interference with any vested right of the company as assignee of the Fairview Railway, but resolves itself into a question of the construction of the ordinance.”

People vs. Detroit United Railway, 162 Mich. 460, 465.

Mr. Justice Steere, in the second case, puts the proposition this way:

“It is unquestionably the law, as a general proposition, that in purchasing the Greenfield and Fairview lines respondent acquired all rights originally granted by the franchises for such lines; and it is equally a general rule of law that those rights, once granted and accepted, could not be destroyed or abridged by subsequent general or local legislation. But it does not follow that respondent might not be in a position when those rights were purchased, by reason of other and previous contract obligations, so that as against certain parties and in cer-

tain localities all those rights could not be enjoyed or enforced by it.

"The rights of the townships, which granted franchises for the lines respondent purchased, or of citizens of said townships, or of the holders of underlying bonds, or the validity of the franchises, are not involved here. It is only a question of whether respondent has, by contract with the city, obligated itself not to collect more than a five-cent fare in a certain zone where, were it not for such contract, it would be authorized so to do under said township franchises. * * *

"Its primary rights in the city territory are by city grant. It has united, built up, and developed as an entirety a street railway system within the city, extending to and beyond its limits. It has absorbed by purchase and made a part of that system the township lines in question with their grants, and as a result of such unification and practical combination, even though in name and form it may retain the original corporate organization of the subsidiary companies, it has made them, as to the city and within the city, an integral part of the whole, and subjected them to the restrictions contracted for in the original city ordinances, thus defining and limiting its own rights under the township grants, within city territory, as subordinate to and dominated by said city ordinances."

City of Detroit vs. Detroit United Railway, 173 Mich. 314, 326, 327, 328.

(In the last sentence as quoted in the Record, the word "dominated" is spelled "domiciled." (Rec. p. 121.)

These conclusions, we submit, raise no Federal question, and, in consequence

THE DECISION OF A STATE COURT DEFINING THE MEANING OF A CONTRACT, WITHOUT REFERENCE TO A SUBSEQUENT LAW, RAISES NO FEDERAL QUESTION.

The following language is found in *Detroit City Railway vs. Guthard*, 114 U. S. 133.

"From the beginning it has been held that, to give us jurisdiction in this class of cases, it must appear affirmatively on the face of the record, not only that a federal question was raised and presented to the highest court of the State for decision, but that it was decided or that its decision was necessary to the judgment or decree rendered in the case."

To quote again:

"Although a federal question may have been raised in the State court, yet if the case was decided in that court on grounds not involving a federal question but broad enough to sustain the decision, this court will refuse to entertain jurisdiction."

Henderson Bridge Co. vs. City of Henderson, 141 U. S. 679.

This case came to this Court a second time when the rule just stated was announced as follows:

"This court in reviewing the final judgment of the highest court of a state will not pass upon a Federal question, however distinctly presented by the pleadings, if the judgment of the state court was based upon some ground of local or general law manifestly broad enough in itself to sustain the decision independently of any view that might be taken of such Federal question."

Henderson Bridge Co. vs. City of Henderson, 173 U. S. 592, 608.

See also:

St. Paul, Minneapolis & Manitoba R. Co. vs. Todd, 142 U. S. 282.

Hammond vs. Johnson, 142 U. S. 78.

Navigation Co. vs. Reybold, 142 U. S. 643.

Fisher vs. New Orleans, 218 U. S. 438.

The attempt to have application made of this rule has been many times before this Court. It may be that the rule as stated in the earlier cases has been somewhat modified. After reviewing all of the authorities had up to that time, Mr. Justice Gray in *New Orleans Water Works Co. vs. Louisiana Sugar Refining Co.*, 125 U. S. 18, 39, concludes as follows:

"The result of the authorities, applying to cases of contracts the settled rules, that in order to give this court jurisdiction of a writ of error to a state court, a federal question must have been, expressly or in effect, decided by that court, and, therefore, that when the record shows that a federal question and another question were presented to that court and its decision turned on the other question only, this court has no jurisdiction, may be summed up as follows: When the state court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. When the existence and the construction of a contract are undisputed, and the state court upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this court has jurisdiction. When the state court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract; and if it is of opinion that it did not confer the rights affirmed by the state court, and therefore its obligation was not impaired by the subsequent law, it may on that ground affirm the judgment. So, when the state court upholds the subsequent law, on the ground that the contract did not confer the right claimed, this court may inquire whether the supposed contract did give the right, because, if it did, the subsequent law cannot be upheld. But when the state court gives no effect to the subsequent law, but decides, on grounds independent of that law, that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed, and this court has no jurisdiction."

In the case before this court for its present consideration, the State court gives no effect to a subsequent law, but decides on grounds independent of the law that the

rights claimed by plaintiff in error were not conferred by the contracts made with the villages and townships surrounding Detroit, because of other and previous contract obligations made by plaintiff in error, through its predecessors, with the City of Detroit.

The situation might be summed up in this way:

The legislature of the state added certain territory to the city. Previous to this, the parties to this litigation had made certain contracts for the operation of cars within the city limits. They could not agree on the meaning of this contract and appealed to the courts to define their rights. The instruments, and ^{they} ~~its~~ meaning, ^{is} ~~is~~ defined. Now, one of the parties objects to the meaning given and asserts that this meaning impairs the obligation of its contract.

This impairment must come as an incident to its meaning, because it is not asserted that the legislature was without power to add the new territory to the city; nor is it claimed that the act of annexation is void. Further, it is not even asserted that this act in any manner makes reference to existing contracts, or mentions the subject-matter of street railway transportation.

But it is insisted that the contracts may not be given their true meaning because of the existence of the act of annexation. The fault which the plaintiff complains of. The thing which impairs its contract lies not in the act of annexation, but in the meaning which the Supreme Court put upon one of the instruments which it voluntarily accepted as a part of its agreement with the public.

We have asserted that the validity of the acts of annexation was not questioned in the proceedings before the Supreme Court. We do not understand that they are here questioned, and a proposition not raised in the state court may not be considered by the Federal Court in reviewing the judgment of the State Court.

Wilson vs. McNamee, 102 U. S. 572.

Keokuk & H. Bridge Co. vs. Illinois, 175 U. S. 626.

Indeed, it would have been idle for plaintiff in error to claim that the legislature was without power to add territory to the city.

Newton vs. Commissioners, 100 U. S. 548.

Conceding, as we think it must be and is conceded, that the annexation acts are valid, that which has wrought the

impairment (if such impairment exists) of the contract obligations of the plaintiff in error is not the annexation act but the other and previous contracts made by plaintiff in error. In consequence, the impairment rests not upon the legislature but is an incident of the legislation, owing to the contracts made by the parties.

This is the conclusion reached by the Michigan Supreme Court, and it is final if it is likewise true that, with respect to the meaning of contracts in a writ of error to the State Court, parties litigant are bound by the interpretation placed by the State Court upon the contracts made between them.

In *Henderson Bridge Co. vs Henderson*, 173 U. S. supra, at page 602, Mr. Justice Harlan speaking of a contract which existed between the bridge company and the city, quotes with his approval from a previous case, as follows:

"This court cannot review the construction which was given to the ordinance as a contract by the state court."

Said the Court through Mr. Justice Miller in *Knox vs. Exchange Bank of Virginia*, 12 Wall, 379:

"But we are not authorized by the Judiciary Act to review the judgments of the state courts, because their judgments refuse to give effect to valid contracts, or because those judgments, in their effect, impair the obligation of contracts. If we did, every case decided in a state court could be brought here, when the party setting up a contract alleged that the court had taken a different view of its obligation to that which he held. As this court said in *Railroad Co. vs. Rock*, 4 Wall., 181, it must be the constitution, or statute of the State which impairs the obligation of a contract, or the case does not come within our jurisdiction."

To quote again from the vigorous language of Mr. Justice Harlan, in *Lehigh Water Co. vs. Easton*, 121 U. S., pages 388, 392:

"The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which in our opinion is valid; it may adjudge a contract to be valid which in our opinion is void;

or its interpretation of the contract may in our opinion be radically wrong; but in neither of such cases would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the State Constitution, or some legislative enactment of the State, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question."

In *Yazoo & M. V. R. Co. vs. Adams*, 180 U. S. 41, 45, will be found this quotation from the opinion of Mr. Justice Brown:

"The case then resolves itself into this: Whether jurisdiction can be sustained when the only question involved is the construction of a charter or contract, although it appear that there were statutes subsequent thereto which might have been, but were not, relied upon as raising a Federal question concerning the construction of the contract. There is no doubt of the general proposition that, where a contract is alleged to have been impaired by subsequent legislation, this court will put its own construction upon the contract, though it may differ from that of the supreme court of the state. The authorities upon this point are very numerous, but they all belong to a class of cases in which it was averred that, properly construed, the contract was impaired by subsequent legislation; but, if the sole question be whether the supreme court has properly interpreted the contract, and there be no question of subsequent legislative impairment, there is no Federal question to be answered."

In a recent case the same doctrine is re-asserted by Mr. Justice Hughes.

Missouri & K. I. R. Co. vs. Olathe, 222 U. S. 187.

(This case involved a situation somewhat similar to the situation here presented.)

In a very recent case, the doctrine is again re-asserted, by Mr. Justice Holmes, as follows:

"If there had been no ordinance of 1910, but the suit had been brought simply upon the alleged duty under the charter of 1892, and the city had recovered, as it might have upon the present interpretation of that instrument, there would have been no question for this court."

Southern Wisconsin R. Co. vs. Madison, U. S. Adv. Ops. 1915, page 400.

Plaintiff's claimed impairment comes therefore not from the law but from the contract obligation which the Supreme Court of Michigan said plaintiff had imposed upon itself by its contracts of 1889.

In consequence, there is no jurisdiction of this Court to review such a decision, because the constitutional mandate affects, not decisions, but legislation. This proposition is supported by the authorities already quoted.

We respectfully submit this Court is without jurisdiction, unless it obtained jurisdiction under the complaint of plaintiff being deprived of its property without due process of law, which brings us to

THERE IS NO DENIAL OF DUE PROCESS OF LAW WHERE, WITHOUT VIOLATING SOME FUNDAMENTAL PRINCIPLE OF LAW, A LAWFUL TRIBUNAL IN A REGULAR WAY HEARS THE PARTIES AND DETERMINES THEIR RIGHTS.

Whatever merit there may be in the contention of plaintiff in error on the question of its being deprived of its property without due process of law is disposed of by the authorities cited under the previous proposition.

Morley vs. Lake Shore & Michigan Southern Rly, 146 U. S., 162.

In *Central Land Co. vs. Laidley*, 159 U. S., 103, 112, where both propositions were presented in a manner somewhat similar to their presentation in the present case, the Court after disposing of the contract contention, said:

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State court does not deprive the un-

successful party of his property without due process of law, within the 14th Amendment of the Constitution of the United States."

For these reasons, we respectfully submit this Court is without jurisdiction.

If, however, it should be successfully contended that this court has jurisdiction, we submit that on the merits of the case

THE MICHIGAN SUPREME COURT CORRECTLY
INTERPRETED THE CONTRACT BETWEEN THE
PARTIES.

When the Detroit United Railway became the owner of the property, rights, privileges and franchises of its predecessors, it obligated itself to carry out the contracts made by those companies.

Chapter 168 Miller's Compilation of Michigan Statutes, 1897, Sec. 15, vol. 2.

Brief for plaintiff in error, 1st case, page 10.

People vs. Detroit United Ry., 162 Mich. 460, 464.

This proposition is in no wise disputed, but it is suggested with considerable elaboration that the decisions of the Michigan Supreme Court have, by implication, made a grant where none existed.

This, we contend, is not the meaning of the opinions given by the Michigan court in these cases. The opinions adhere to the established rule of construction of all public grants.

In *People vs. Detroit United Railway*, 162 Mich., Mr. Justice Stone, at page 465, said:

"The rule that the terms of the franchise must be construed strictly against the respondent, as held in *Township of West Bloomfield vs. Railway*, 146 Mich. 198, is applicable here."

In *Detroit vs. Detroit United Railway*, 173 Mich. 314, Mr. Justice Steere, at page 323, announces:

"That the terms of a franchise, or grant, by a municipality, shall be construed strictly as against the grantee and as favorably to the grantor as its terms permit."

This, we respectfully submit, is the settled law of this court.

Charles River Bridge Co. vs. Warren Bridge Co. et al, 11 Peters, 420, 544.

"Grants of franchises and special privileges are always to be construed most strongly against the donee, and in favor of the public."

St. Clair County Turnpike Co. vs. Illinois, 96 U. S. 63, 68.

"Public grants susceptible of two constructions must receive the one most favorable to the public."

Hamilton Gas Light & Coke Co. vs. City of Hamilton, 146 U. S. 258.

Knoxville Water Co. vs. Knoxville, 200 U. S. 22, 33, 34, quotes with its approval this extract from *Chenango Bridge Co. vs. Binghamton Bridge Co.*, 3 Wall., 51, 75.

"The principle is this: That all rights which are asserted against the state must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist. If, on a fair reading of the instrument, reasonable doubt arises as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the state."

"This principle has been declared axiomatic as a doctrine of this court."

Blair vs. Chicago, 201 U. S. 400, 472, 473.

This principle of construction was the one in the mind of the court in each of the cases brought here for review.

In the first case the Michigan Supreme Court said:

"We think it not unreasonable to hold that this mutual contract was made in view of the power of the legislature of the state to increase or diminish the territory within the city, and that neither the city nor the company contemplated that in case of an extension of the lines of the company within the city, either by purchase or acquisition from another company, an increased fare should be demanded."

People vs. Detroit United Railway, 162 Mich. 460, 462.

In the second case the court said:

"Certain of the language used in the ordinances points to such a possibility (the possibility of expansion and annexation), and intimates an understanding that a growth of the city and development of its public utilities, to which the grants should apply, were anticipated."

City of Detroit vs. Detroit United Railway, 173 Mich. 314, 325.

The growth and continued expansion of Detroit is common knowledge, at least within the borders of the state. Judge Hosmer, of the local Circuit court, in his opinion in this case said:

"Between the years 1850 and 1860 the population of Detroit had more than doubled." (Rec. p. 102.)

Many acts of annexation had antedated the ordinance of 1889, as well as the acts of annexation here complained of. The first act of expansion from the original city was the act of October 24, 1815. *Laws of Michigan*, 1820, page 171. This was followed by others which might be enumerated as follows:

March 30, 1820. *Laws of Michigan*, 1820, p. 176.

April 4, 1827. *Territorial Laws*, Vol. 2, p. 329.

May 28, 1832. *Territorial Laws*, Vol. 3, p. 913.

February 20, 1849. *Laws of Michigan*, 1849, p. 30.

February 12, 1857. *Laws of Michigan*, p. 209.

April 12, 1873. *Laws of Michigan*, 1873, p. 636.

May 3, 1875. *Laws of Michigan*, 1875, p. 64.

May 26, 1885. *Laws of Michigan*, 1885, pp. 418, 419.

June 20, 1885. *Laws of Michigan*, 1885, p. 578.

All of these acts were enacted by the legislature before the plaintiff in error purchased the properties in question, and all of them were enacted before the contract of 1889 was entered into.

Of these enactments the Michigan court might take judicial notice.

People vs. Quidder, 172 Mich. 280, 286.

In the face of this local history, can it be truthfully said the contracting parties had no thought of the future?

If the city limits had in the past undergone this change was it not certain the future would see other changes?

If the city limits in the past were an uncertain quantity because of the constant legislative activity, what did the parties mean by the use of the words "city limits" in a contract which was to run for a period of thirty years?

The answer to these questions amounts to no more than an interpretation of what was in the minds of the parties when they used the words in their various contracts.

The language of the contract in 1889 was expressive of the rights of the parties, and as that contract was to live for a number of years thereafter unless modified by the parties, for each additional year of its life it must have continued to express the rights of the parties.

Under such circumstances, how could the words "in said city," or "within the city limits" be given an interpretation which would narrow them so that in one year they would be expressive of one thing, and in other years expressive of something else?

No such incongruous situation was destined to arise under the contract.

It is also a matter of local history, and of this the court could take judicial notice—

Geist vs. Detroit City Rly., 91 Mich. 446.

That an independent street railway line had been established upon Woodward avenue north of the railroad tracks referred to (Rec. p. 59). Also an independent railway was in operation upon Dix avenue from 24th street westerly to Livernois avenue. That both of these companies received their grants from township and village authorities other than the City of Detroit; that both of these lines were in operation in the territory through which they ran when it was added to the City of Detroit; that both of these railways were purchased by plaintiff in error and the lines connected with and made a part of its system, and that no claim was made by plaintiff in error at that time of its right to charge an additional fare because of these township grants, or for this strained construction of the contract now contended for.

It is asserted that this proposition is denied by the answer; that under Michigan authority the allegations of the answer must stand. Brief of plaintiff in error, 2nd case, p. 20.

In the first place, these facts are not alleged. Certain conclusions from these facts were averred, but the denial of the conclusion is not an averment of any fact. It is upon the facts set up in the answer that the Court relies.

Detroit Tug & Wrecking Co. vs. Wayne Circuit Judge, 75 Mich. 360.

We submit this local history, the language of the instruments so cogently stated by the Michigan Court in its opinions, together with the settled rule of construction of public grants, left to the Court no other conclusion possible except the one arrived at.

CONCLUSION.

The Michigan Supreme Court correctly interpreted the contracts between the parties:—

1. Because the correct rule of interpretation of public grants was applied.
2. Because the language of the instruments sustains this interpretation.
3. Because local history and surrounding circumstances make clear the meaning of the instruments as intended by the parties.

The writ of error should be dismissed or the judgments affirmed.

ADDENDA.

(All references to the Record, except when otherwise stated, are to the Record in the second case.)

Plaintiff in error is a corporation organized under the laws of the State of Michigan. (Admission in brief of plaintiff in error, second case, p. 3).

The defendant in error, the City of Detroit, is a municipal corporation organized under the laws of the State of Michigan. (Rec. pp. 1, 22).

Plaintiff in error owns and operates all the street railways in the City of Detroit. It also owns and operates all the interurban railways entering Detroit. (Admission in brief of plaintiff in error, second case, p. 2).

JEFFERSON AVENUE.

Plaintiff in error, or rather its predecessor in title, obtained the parent franchise on November 24, 1862. (Admission in brief of plaintiff in error, first case, p. 6). This instrument ran for a period of thirty years. (Rec. p. 48, Sec. 20.)

On November 14, 1879, it was extended for a period of thirty years from this date. (Rec. p. 57, Sec. 5).

It, with its supplements, still expressed the true relation existing between the parties for Jefferson avenue and the greater portion of the important thoroughfares of the city. (Rec. p. 27, paragraph 15-a; Rec. pp. 65, 69).

It fixed the fare to be charged, in this language: "The rate of fare for any distance shall not exceed five cents on any one car on any one route named in this ordinance." (Rec. p. 46, Sec. 8).

It defined routes in the following language: "The routes of all of said railway shall commence in Woodward Avenue Road at Campus Martius; from thence running on their

several courses to the outer limits of the city." (Rec. p. 45, Sec. 5).

On January 3, 1889, permission was given the railway company to extend certain of its lines, also to build additional lines. This grant was subject to the conditions of previous grants, and the fare provided was five cents. (Rec. pp. 61, 62). In addition it obligated itself to carry passengers between the hours of 5:30 o'clock and 7:00 o'clock in the morning and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon for a single fare to be paid for by a ticket sold at the rate of 8 tickets for 25 cents "over any of its lines in said city." (Rec. p. 63, paragraph "D").

The companies declined to offer these tickets for sale on their cars and an ordinance was passed compelling them to do so. (Brief of plaintiff in error, first case, pp. 14, 15). The validity of this measure was questioned by a predecessor in title of the plaintiff in error, but it was sustained by the Michigan Supreme Court.

City of Detroit vs. Ft. Wayne & Belle Isle Railway Co., 95 Mich., 456.

This decision has in no wise been modified, and it has stood as the law of Michigan since its date, April 28, 1893.

On May 26, 1885, almost four years before the passage of the ordinance or contract of 1889 just above referred to the legislature extended the city limits on Jefferson avenue from Mt. Elliott avenue to Baldwin avenue (Rec. pp. 5, 27). This territory was part of the Township of Hamtramck, the westerly line of the township being at Mt. Elliott avenue (Rec. p. 72), and the easterly line approximately at Hurlbut avenue. (Map and Rec. p. 5).

On August 12, 1873, the township authorities granted a franchise to the Hamtramck Railway Company covering Jefferson avenue from McClellan avenue westerly to Mt. Elliott avenue. The fare was not to exceed five cents (Rec. 71, 72). It was confirmed by the township officials to the Detroit City Railway, a predecessor of plaintiff in error, on November 1, 1881, said company having purchased all the franchises and property of the grantee and having agreed with it "to operate their line of street railway on Jefferson avenue (as extended) through the Township of Hamtramck." (Rec. p. 73).

On April 14, 1891, the same township granted a franchise, to certain individuals who subsequently incorporated as the Jefferson Avenue Railway, to operate a railway "in, along and through the said street or highway known as the Jefferson Avenue or Lake Shore Road through the Township of Hamtramck from the easterly limits of said township to the westerly limits thereof." (Rec. pp. 75, 76). Its fare provision enabled the grantee to charge "not more than five cents * * * for one continuous trip * * * from any point * * * in said township to any point on said Jefferson avenue in the City of Detroit * * * and from any point on said Jefferson avenue in said City of Detroit to any point on said line in said township." (Rec. p. 76, Sec. 4).

On March 13, 1891, the Village of Grosse Pointe granted a franchise to the same individuals who assigned to the same company, to operate a railway "in, along and through said street or highway known as Jefferson avenue or Lake Shore Road through the Village of Grosse Pointe from the westerly line of the village to the easterly village limits." (Rec. p. 78). The rate of fare was not to exceed two cents per mile and not to exceed five cents for one continuous trip over any portion of the line in said village." (Rec. p. 79, Sec. 4).

This grant was supplemented by one of April 17, 1893, and again by one of August 19, 1895, and the latter fixed the fare "for one continuous ride from the present easterly limits of the City of Detroit to the present easterly limits of said village" at five cents. (Rec. p. 84).

On April 8, 1891, the Township of Grosse Pointe granted a franchise to operate a street railway to the same individuals who subsequently incorporated as the Jefferson Avenue Railway, covering those portions of Jefferson avenue easterly and westerly of the limits of the Village of Grosse Pointe, and the fare was to be not more than five cents easterly or westerly of said village in said township. (Rec. pp. 84, 88).

This was supplemented by the Village of Fairview on May 16, 1905, the grant running directly to the plaintiff in error, and the fare was fixed at five cents. (Rec. pp. 91, 93).

At various times the territorial limits of the City of Detroit along Jefferson avenue were as follows: On February 12, 1857, at Mt. Elliott avenue. (Rec. p. 27). On

May 26, 1885, the limits were extended from Mt. Elliott avenue to Baldwin avenue; and on May 13, 1891, from Baldwin avenue to Hurlbut avenue; and on May 1, 1907, from Hurlbut avenue to a point east of the Alter Road in the then Village of Fairview. (Rec. p. 28, paragraph 16).

The cars of the plaintiff in error are operated on Jefferson avenue and Grand River avenue as one route. (Rec. p. 30, paragraph 20).

GRAND RIVER AVENUE.

The original grant touching Grand River avenue which became effective, was made on May 1, 1868. (Rec. p. 22, paragraph 2). By it cars were to be operated "through Woodward avenue from Jefferson avenue, through said first named avenue to its interesection with Grand River avenue, and from thence on and through said Grand River avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo tracks, and also on and through any other street or streets running between the western terminus above specified, and Woodward avenue, to the Detroit River, as the Common Council shall by resolution designate." (Rec. 10, Sec. 2). The fare provision was as follows: "The rate of fare for any distance shall not exceed five cents in any one car on any one route named in this ordinance." (Rec. p. 12, Sec. 6).

Subsequently, some amendments were made to this grant. One of these gave permission to construct a line on Myrtle street and to double track Grand River avenue to the Boulevard. (Rec. p. 18, paragraph 3). (Also, Rec. p. 23, paragraph 5).

Then on January 3, 1889, in conjunction with all the companies operating street cars in Detroit, it entered into the workingmen's ticket ordinance, Exhibit "B," (Rec. p. 17).

Sec. 3 of this instrument contains the agreement:

"To carry passengers from the westerly terminii of its lines on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford

street, or any point on any of its said lines, to any point on its line on Congress street east, or to the terminus thereof for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets; also, for a continuous trip from any point on the line of said railway to any other point on the lines of said railway, for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way when offered for fare." (Rec. p. 18, Sec. 3).

On November 1, 1897, the Township of Greenfield gave to certain individuals a franchise to operate a railway on Grand River avenue from the westerly line of the township to the westerly limits of the City of Detroit. These individuals assigned to a company and this company to another and the last to the plaintiff in error. (Rec. p. 24, paragraph 9). The fare was five cents, with tickets at the rate of 6 for 25 cents and for children going to or from school a special ticket for thirty cents, good for ten rides. (Rec. p. 40, Sec. 7).

The territorial limits of the city as they were extended from time to time along Grand River avenue were as follows: On February 12, 1857, at the tracks of the Michigan Southern and Detroit, Monroe & Toledo Railway. On May 3, 1875, they were extended to McGraw avenue; and on May 26, 1885, to a point a short distance from the western boulevard. (Rec. p. 23, paragraphs 4 and 6). On June 16, 1905, the point was fixed 1100 feet further out Grand River avenue, and on June 19, 1907, the point was again extended 1810 feet further out Grand River avenue (Rec. p. 24, paragraph 10).

The Detroit United Railway became the owner of all the street railways in the City of Detroit and all those entering the City of Detroit, on December 31, 1900. (Admission in brief of plaintiff in error, first case, p. 4).

All of the companies mentioned in these various grants respecting Jefferson and Grand River avenues were incorporated under the laws of the State of Michigan, and the plaintiff in error, when the laws annexing the territory to the City of Detroit took effect, the laws herein complained of, had by mesne conveyances become the owner of and was operating not only these railways but all the railways in the City of Detroit. (Brief of plaintiff in error, second case, pp. 2, 3).

ASSIGNMENTS BY STREET RAILWAY CORPORATIONS:

Detroit City Railway Company to Detroit Street Railway Company, December 1, 1890.

Detroit Street Railway Company to Detroit Citizens Street Railway Company, September 16, 1891.

Detroit Citizens Street Railway Company to Detroit United Railway, December 31, 1900.

George Hendrie and others to Jefferson Avenue Railway Company, June 5, 1891.

The Jefferson Avenue Railway Company to Detroit Suburban Railway Company, November 1, 1892.

Detroit Suburban Railway Company to Detroit United Railway, December 1, 1900.

(Rec. 1st case, pp. 6 and 7).

Grand River Street Railway to Detroit Citizens Street Railway, and Detroit Citizens Street Railway Company to Detroit United Railway. (Rec. pp. 25, 26).

Brownell and others to Grand River Electric Railway to Detroit & Northwestern Railway; and Detroit & Northwestern Railway to Detroit United Railway. (Rec. p 38).

An act to annex certain territory situated in the township of Greenfield, in the County of Wayne, to the City of Detroit, and to apply and make operative in said territory all laws applicable to and operative in said city.

The People of the State of Michigan enact:

Section 1. All that territory situated in the township of Greenfield in the county of Wayne, hereinafter described, is hereby annexed to and

shall constitute a part of the city of Detroit. Said territory is described as follows, to-wit: Beginning at the intersection of the present northerly limits of the city of Detroit with the northeasterly line of Grand River avenue, thence northwesterly along the northeasterly line of said Grand River avenue to the intersection with the extension of the northerly line of Allendale subdivision of southerly ten feet of lot four and lots seven, eight, eleven and twelve of Tireman's subdivision of part of lot five, one-fourth sections fifty, fifty-one, fifty-two, ten thousand-acre tract, and fractional sections three; town two south, range eleven east, Greenfield township; thence westerly along the northerly line of said Allendale subdivision and extension thereof, to the easterly line of private claim two hundred sixty; thence southerly along the easterly line of private claim two hundred sixty to the intersection with the present northerly line of the city of Detroit; thence easterly; thence northerly and again easterly along the present city limits of the city of Detroit to the point of beginning, the above described property being now in the township of Greenfield.

Sec. 2. The said territory shall constitute a part of the fourteenth ward of the city of Detroit. The common council shall, at least thirty days before the first general or special election after the passage of this act, provide for the lawful registration of electors in said territory, in the northerly voting district of said ward as now or as it may hereafter be established.

Sec. 3. The territory aforesaid shall, from and after the taking effect of this act, be subject to all the laws of this State applicable to the city of Detroit, and also to all the ordinances and regulations of the said city of Detroit, and shall become a part of the school district as now established in the said city of Detroit, and subject to all laws, ordinances and regulations applicable to the said school district.

Sec. 4. The annexation of the said territory shall not, however, be held to interfere with or prevent the levy, collection or apportionment of any tax levied or assessed upon any of the property situated in said territory for the year nineteen hun-

dred five, for State, county, school, highway or township purposes, and said territory shall not be subject to taxation for city purposes prior to January one, nineteen hundred six.

This act is ordered to take immediate effect.

Approved June 16, 1905.

An act to annex certain territory in the village of Hamtramck, township of Hamtramck, and other territory in the township of Greenfield, to the city of Detroit, county of Wayne and State of Michigan.

Sec. 1 described certain land in the Village of Hamtramck.

Sec. 2 provided for voting in this district.

Sec. 3 described territory from the township of Greenfield annexed to the city of Detroit.

Sec. 4 provided for voting districts for this territory.

"Sec. 5. The common council shall have the same power to change the boundaries of said election districts created by this act which it possesses to change the boundaries of any other election district in the city of Detroit."

Sec. 6. The common council of said city of Detroit shall, at least thirty days before the first general or special election after the passage of this act, provide for the lawful registration of the electors in said territory in their respective precincts as hereby established."

Sec. 7. This act shall not change in any respect the boundaries of the first and second representative districts of the county of Wayne as they exist prior to the passage of this act and shall not change the manner of electing representatives in said districts. The common council of the city of Detroit shall fix and establish voting precincts in said annexed territory to enable the electors in said territory to vote for representatives in the State Legislature in said second representative district of Wayne county and for other lawful purposes until the next apportionment and division of Wayne county into legislative representative districts.

Sec. 8. The aforesaid annexed territory shall from and after the taking effect of this act, except as herein otherwise provided, be subject to all the

laws of this State, applicable to the city of Detroit and also to all the ordinances and regulations of the said city of Detroit and shall become a part of the school district as now established in the said city of Detroit and subject to all laws, ordinances and regulations applicable to said school district.

Sec. 9. The annexation of said territory shall not, however, be held to interfere with or prevent the levy, collection or apportionment of any tax levied or assessed upon any of the property situated in the said territory for the year nineteen hundred seven, for state, county, school, highway or township or village purposes, and said territory shall not be subject to taxation for city purposes prior to January first, nineteen hundred eight.

Sec. 10. So long as the territory within the village of Hamtramck, hereby annexed to the city of Detroit, shall continue to receive water from the water sytem of the village of Hamtramck it shall continue to be a part of said water system and shall continue to pay its water rates and taxes to the village of Hamtramck as heretofore. All suits now pending which affect said territory so annexed and to which the village of Hamtramck is a party shall be revived upon petition by the city of Detroit, and upon such revival said city of Detroit shall be a party thereto, and shall have the same standing, rights and liabilities therein as though such suits had been originally begun by or against said city of Detroit as the case may be. The said city of Detroit shall assume and pay such part or portion of all the bonds, debts and obligations of every name and nature owing by said village of Hamtramck at the date this act takes effect and interest on such bonds hereafter to accrue, as the assessed valuation of the property within the territory of said village hereby annexed to said city bears to the whole assessed valuation of the territory of said village, as appears by the last assessment roll of said village.

This act is ordered to take immediate effect.

Approved June 19, 1907.

An act to annex all that territory situate in the village of Fairview, in the township of Grosse Pointe, in the county of Wayne, lying and being west of a line two hundred feet east of the Alter Road in said village of Fairview, and extending from the northely limits of said village to Lake St. Clair to the city of Detroit, and make operative in said territory the charter of the city of Detroit and all statutes, laws and ordinances now or hereafter made applicable to and operative in said city and to repeal act number five hundred one of the Local Acts of nineteen hundred three, entitled "An act to incorporate the village of Fairview, in the township of Grosse Pointe, Wayne county."

The People of the State of Michigan enact:

Sec. 1. All that territory situate in the village of Fairview, in the township of Grosse Pointe, in the county of Wayne, lying and being west of a line two hundred feet east of Alter Road in said village of Fairview and extending from the northerly limits of said village to Lake St. Clair, shall, by virtue of this act, be annexed to and form a part of said city of Detroit.

Sec. 2. The said territory so annexed to said city shall constitute one or more precincts in the seventeenth ward of said city of Detroit, the number of which precincts shall be designated by the common council of the city of Detroit.

Sec. 3. Said common council shall provide the necessary registrars and inspectors of elections for said precinct or precincts, which said officers shall hold office until their successors are duly elected and qualified in accordance with the election laws applying to said city of Detroit.

Sec. 4. The corporate organization of the village of Fairview and all the powers and duties of the several officers thereof shall cease, and all corporate powers and authority vested in said township of Grosse Pointe, in respect to the territory hereby annexed to said city, shall cease, and there-

upon all right and title to property both real and personal, and all claims and demands belonging to either said village in its corporate capacity, and all right and title to real property situate within the territory hereby annexed to said city belonging to the township of Grosse Pointe in its corporate capacity shall, by virtue of this act, pass to and vest in said city. The officers of said village and township respectively shall thereupon transfer the possession and control thereof to the common council of said city, or to such officer or officers as said common council may direct. All moneys belonging to said village shall be paid over to said city, and all books, papers and documents belonging to said village shall be transferred and delivered to the common council of said city or to such officer of said city as they may direct. The circuit court for the county of Wayne may compel the delivery of all property, moneys, books, papers and documents in this act referred to by the writ of mandamus issued out of and under the seal thereof. The said city of Detroit and the village of Grosse Pointe Park shall assume and pay such part or portion of all the bonds, debts and obligations of every name and nature owing by said village at the date aforesaid, that is to say, the said city of Detroit shall assume and pay such portion of said bonds, debts and obligations as the assessed valuation of the property within the territory hereby annexed to said city bears to the whole assessed valuation of the territory of said village of Fairview as appears by the last assessment roll of said village prior to the incorporation of said village of Grosse Pointe Park, and the said village of Grosse Pointe Park shall assume and pay such portion of said bonds, debts and obligations as the assessed valuation of that part of the territory in the village of Grosse Pointe Park bears to the total valuation of the entire property of said village of Fairview as appears by said last assessment roll of said village. All suits or actions, either at law or equity, pending in any court by or against said village of Fairview, shall be revived jointly for or against the city of Detroit and the village of Grosse Pointe Park as the case may be, upon the application of any party to said

suit or of said city of Detroit or said village of Grosse Pointe Park, and all suits or actions either at law or in equity, hereafter commenced upon any debt, obligation or right of action, in favor of or against said village, shall be prosecuted by or against the city of Detroit and the village of Grosse Pointe Park as the case may be. Any judgment hereafter rendered upon any such debt or obligation or in any such suit shall be paid by said city of Detroit and said village of Grosse Pointe Park in the above proportion and may be enforced as judgments against municipalities are usually enforced and as provided by law for the enforcement of judgments against the city of Detroit and villages. Any judgments that may have been rendered or any decree entered against said village of Fairview the city of Detroit and the village of Grosse Pointe Park shall, for a period of sixty days hereafter have respectively the right to appeal and review such judgment or decree in the proper appellate court.

Sec. 5. All village taxes lawfully assessed in the territory hereby annexed to the said city shall be collected in the manner now provided by law for the collection of taxes assessed within said city of Detroit. All taxes for state, county or other purposes levied in said territory in the year nineteen hundred seven shall be equalized, levied and collected in pursuance to the general laws of the state. All moneys belonging to the township of Grosse Pointe at the date aforesaid, raised for township purposes, or thereafter collected for like purposes, on account of taxes levied and assessed, shall be apportioned between the said city and said township according to the relative valuation of the taxable property so annexed to said city assessed on the last assessment roll of said township, and the valuation of property so assessed remaining in said township. Such settlement and apportionment shall be made by agreement between the township board of said township and the common council of said city; and the amount found due upon such settlement shall be paid over to the said city by the proper officers of said township. In case the said township board and the said common council shall not be able to agree upon an adjustment and settle-

ment the same may be made by commissioners to be appointed by the circuit court for the county of Wayne, in chancery, on petition of either party; and said court is hereby given jurisdiction and authority to determine any and all questions that may arise in carrying out the provisions of this section, and to grant such relief in the premises as may be equitable.

Sec. 6. This act shall not change in any respect the boundaries of the first and second representative districts of the county of Wayne as they exist prior to the passage of this act, and shall not change the manner of electing representatives in such districts. The common council of the city of Detroit shall fix and establish voting precincts in said territory hereby annexed to said city whereby the electors residing within said territory may vote for representatives in the State legislature in the said second representative district of Wayne county until the next apportionment and division of said Wayne county into representative districts.

Sec. 7. The corporate organization of the public schools and school district within the territory so annexed to said city, and the powers and duties of the several boards and officers thereof shall cease; and thereupon all right and title to property, both real and personal, belonging to said public schools situate entirely within the said territory so annexed to said city, shall pass to and vest in the board of education of the city of Detroit; and the officers of said public schools and school district shall transfer the possession and control thereof to said board of education, or to such officer or officers as it may direct. Said board of education shall thereafter take charge of and manage and conduct the schools in said territory. All moneys and funds belonging to said public schools and school district situate entirely within the territory so annexed to said city shall be paid over by the boards and officers of said schools and school district having charge thereof to the said board of education. All books, papers and documents belonging to said public schools or school district shall also be turned over and transferred to said board of education. Said board of education shall assume and pay all bonds, debts and

obligations owing by said public schools and school district situate entirely within the territory so annexed to said city.

Sec. 8. It shall be the duty of the board of school inspectors of said town of Grosse Pointe to make proper disposition of the parts of the school districts severed by this act remaining in said township. The township board of said township and the board of education of said city of Detroit shall adjust the relative rights and interests of the parts of said school districts so severed, remaining in said township and the parts thereof embraced within the territory so annexed to said city. The value of the school property and the unexpended school money, and all debts and obligations of such districts shall be apportioned and settled according to the assessed value of the taxable property of the respective parts of the divided districts. Upon such settlement being made, if it shall appear that one party is indebted to the other party, the party so indebted shall pay such indebtedness to the party entitled thereto as soon as money applicable to such purposes can be secured. In case the said township board and said board of education shall not be able to agree upon an adjustment and settlement, the circuit court for the county of Wayne, in chancery, shall have like jurisdiction to determine an adjustment as is hereinbefore in this act provided in case of a disagreement between said township board and the common council of said city.

Sec. 9. All the provisions of an act, entitled "An act to provide a charter for the city of Detroit, and to repeal all acts and parts of acts in conflict therewith," approved June seven, eighteen hundred eighty-three, as amended, and all other statutes, laws and ordinances applicable to said city of Detroit shall apply to and be operative in the territory so annexed to said city, in like manner as in other territory of said city, except as in this act otherwise provided.

Sec. 10. Act number five hundred one, of the Local Acts of the Legislature of nineteen hundred three, entitled "An act to incorporate the village of Fairview, in the township of Grosse Pointe, Wayne county," is hereby repealed.

This act is ordered to take immediate effect.
Approved Oct. 24, 1907.

Harry J. Dingeman,
Attorney for defendants in error.

P. J. M. Hally,
Of counsel.



DETROIT UNITED RAILWAY *v.* PEOPLE OF THE
STATE OF MICHIGAN.

DETROIT UNITED RAILWAY *v.* CITY OF
DETROIT.

ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

Nos. 1, 4. Argued October 20, 1916.—Decided December 11, 1916.

Plaintiff in error, in 1900, under the Michigan Street Railway law (Laws 1867, vol. 1, p. 46; Comp. Laws 1897, c. 168), acquired by purchase certain street railway lines in the City of Detroit, with their franchises, and, soon afterwards, certain suburban lines, with their franchises. The latter lines connected with the former at the city boundary, but lay wholly within adjacent village and township territory. The franchises for the city lines had arisen through ordinances of the city, among them ordinances passed in 1889, which placed special restrictions on fares, and were accepted by the then owners of the city properties. The franchises for the suburban lines had arisen through village and township ordinances which fixed the fares upon a basis more favorable to the respective grantees. Until all were acquired by the plaintiff in error, the city properties had been owned and held independently of the suburban properties. Plaintiff in error united the properties thus acquired under one organization. Thereafter, by acts of the legislature passed in 1905 and 1907, the limits of the city were so extended that portions of the two outlying railways were embraced therein. These acts

242 U. S.

Syllabus.

contained no reference to existing contracts nor specific mention of street railway rights, but each provided that the territory annexed should be subject to all the laws of the State applicable to the city and to all the ordinances and regulations of the city, with exceptions not here material. This litigation resulted from the contention of the city, (which the state court sustained), that the outlying lines, in so far as they had come within the city through its extension, came also within the fare restrictions of the city ordinances of 1889.

Held, (1) Upon consideration of the village and township grants and the law under which they were made (Act of 1867, §§ 13, 14 and 20), that the right to charge fare as therein permitted, upon the lines covered by those grants, was a valid right of contract whose obligation could not constitutionally be impaired by subsequent state legislation.

(2) That, conceding the validity of the Acts of 1905 and 1907 as annexation acts, yet an impairment of this contractual right, resulting from the effect given to them by the decision of the state court combined with the construction of the city ordinances as contractually binding the plaintiff in error to submit to their fare restrictions on all of its lines within the city as so extended, was an impairment attributable to the annexation acts as well as to the construction of the city ordinances.

(3) Therefore, whether the agreements imported by the ordinances of 1889, when properly construed, were operative in the added city territory, was a question touching the merits of the case and not the jurisdiction of this court.

(4) That, read with the other city ordinances under which the franchises for the city lines were granted, the ordinances of 1889, in requiring one of the predecessors of plaintiff in error to carry passengers at reduced rates "over any of its lines in said city" and in requiring another to apply single fares and reduced rates "over the entire route of said company" were not intended to apply prospectively to lines which those companies might afterwards own within subsequent additions to the city.

(5) Even if such extended construction were allowable in respect of lines subsequently built under the actual or assumed authority of the ordinances of 1889, it could not be allowed in derogation of rights, privileges, and franchises—especially as to fare—arising independently under the township and village ordinances and acquired by plaintiff in error by purchase before the city was extended. Michigan Street Railway Act of 1867, § 15; Comp. Laws, 1897, § 6648, applied.

A grantee of a public grant may not be compelled to suffer the ills of a strict construction in one aspect without being accorded the benefits necessarily flowing from that construction in others.

Notwithstanding statements in *Henderson Bridge Co. v. Henderson City*, 141 U. S. 679, 689; 173 U. S. 592, 602, it is settled that when called upon to exercise jurisdiction under the contract clause this court must determine upon its independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? and (3) Has that obligation been impaired by subsequent legislation?

162 Michigan, 460; 173 Michigan, 314, reversed.

THE case is stated in the opinion.

Mr. Elihu Root, with whom Mr. John C. Donnelly, Mr. William L. Carpenter, Mr. Fred A. Baker and Mr. Henry L. Lyster were on the briefs, for plaintiff in error.

Mr. P. J. M. Hally, with whom Mr. Harry J. Dingeman was on the brief, for defendants in error:

The Michigan Supreme Court bases its judgments solely on the meaning of the contracts existing between the parties. *People v. Detroit United Railway*, 162 Michigan, 460, 463, 465; *City of Detroit v. Detroit United Railway*, 173 Michigan, 314, 326, 327, 328.

The decision of a state court defining the meaning of a contract, without reference to a subsequent law, raises no federal question. *Detroit City Railway v. Guthard*, 114 U. S. 133; *Henderson Bridge Co. v. City of Henderson*, 141 U. S. 679; *Henderson Bridge Co. v. City of Henderson*, 173 U. S. 592, 608; *New Orleans Water Works Co. v. Louisiana Sugar Refining Co.*, 125 U. S. 18, 39.

In the present cases, the court below gave no effect to a subsequent law, but based its decision on the independent ground that the rights claimed by the plaintiff in error were not conferred by the contracts made with the villages and townships surrounding Detroit, because of other and previous obligations which had been contracted through its predecessors with the City of Detroit. The annexation

acts being unquestionably valid, the impairment, if any exists, of the contract obligations arises not from the acts, but comes as a mere incident of the legislation due to the agreements made by the parties.

The litigants are bound by the state court's construction of the contracts. *Henderson Bridge Co. v. City of Henderson*, 173 U. S. 592, 602. The only impairment conferring jurisdiction on this court is impairment by state law or constitution. *Knox v. Exchange Bank of Virginia*, 12 Wall. 379; *Lehigh Water Co. v. Easton*, 121 U. S. 388, 392. It is only where subsequent legislation intervenes that this court will construe the contract for itself. *Yazoo & M. V. R. Co. v. Adams*, 180 U. S. 41, 45; *Missouri & K. I. R. Co. v. Olathe*, 222 U. S. 187; *Southern Wisconsin R. Co. v. Madison*, 240 U. S. 457, 460, 461.

There is no denial of due process where, without denying any fundamental principle of law, a lawful tribunal in a regular way hears the parties and determines their rights. *Morley v. Lake Shore & Michigan Southern Ry.*, 146 U. S. 162; *Central Land Co. v. Laidley*, 159 U. S. 103, 112.

The court below correctly interpreted the contracts. In succeeding to their property, franchises, etc., plaintiff in error obligated itself to carry out the contracts made by its predecessors. The decisions of the court below, in interpreting these obligations, merely followed the established rule that public grants or franchises must be construed strictly against the grantee and in favor of the public—a principle established by many decisions of this court.

The continued expansion of Detroit was of common knowledge, evidenced by many acts of annexation, enacted before the plaintiff in error purchased the properties in question, and all prior to the contract of 1889. The contracting parties must have had in view the certainty that the city limits would go further. The term "city limits" in a contract to run for thirty years means the city limits as they will become. The obligations of the parties under

the contract of 1889 were intended to expand territorially as the limits grew.

MR. JUSTICE PITNEY delivered the opinion of the court.

These two cases involve identical questions, were argued together, and may be disposed of in a single opinion. They concern the rates of fare that may be charged by plaintiff in error upon certain street railway lines within the present limits of the City of Detroit, and in both cases it is insisted that the state court of last resort has given such an effect to statutes enacted in the years 1905 and 1907 for extending the corporate limits as to impair the obligation of the contracts contained in franchises theretofore granted by the governing authorities of the annexed territory to the predecessors in title of plaintiff in error.

Plaintiff in error was incorporated December 28, 1900, under the Street Railway Act of 1867 and amendments thereto (Mich. Laws 1867, vol. 1, p. 46; Comp. Laws 1897, c. 168), for the purpose, as its corporate name indicates, of acquiring, maintaining, and operating various lines theretofore constructed by other companies. Section 15 of the act (§ 6448, Comp. Laws) provides that any street railway company may purchase and acquire any street railway in any city, village, or township owned by another corporation, together with the rights, privileges, and franchises thereof, "and may use and enjoy the rights, privileges and franchises of such company, the same, and upon the same terms as the company whose road and franchises were so acquired might have done." Under this authority it shortly thereafter acquired and united under one organization certain lines previously constructed and operated independently throughout the city and its suburbs under different and distinct franchises, of which the following is a summary:

In November, 1862, the city, by ordinance, granted to the incorporators of the Detroit City Railway the right

242 U. S.

Opinion of the Court.

to construct railways in certain streets, including Jefferson Avenue, which extends from the centre of the city in a northeasterly direction to and beyond the city limits. All the lines authorized were to commence at Campus Martius, and run thence on their several courses to the city limits, and the route along Jefferson Avenue to the eastern limits was to be completed within six months after March 31, 1863. In 1873 a section was added authorizing the construction of a second track along Jefferson Avenue. In 1862 the city limits on Jefferson Avenue were at Mt. Elliott Avenue. In 1885 they were extended to a point 200 feet east of Baldwin Avenue, and while they remained as thus fixed, and in the year 1889, a supplemental ordinance was passed granting to the Detroit City Railway, among other things, the right to extend its double track along Jefferson Avenue from its then present easterly terminus to the easterly city limits, and fixing a time within which the same should be constructed. There was a provision that the additional lines should be operated in connection with and as parts of the then present system of the Detroit City Railway, and that the company should agree, among other things, to make arrangements for carrying passengers between the hours of 5.30 and 7.00 a. m., and between 5.15 and 6.15 p. m., over any of its lines in the city for a single fare upon tickets sold at the rate of eight for twenty-five cents, with specified transfer rights.

In 1891 the city limits were further extended along Jefferson Avenue to Hurlburt Avenue, which was the easterly line of the Township of Hamtramck. The railroad on Jefferson Avenue in the territory covered by this extension was constructed under franchises granted by the authorities of that township, respecting which no question is now raised.

From Hurlburt Avenue eastwardly to the Country Club in the Township of Grosse Pointe—a distance of about four and one-half miles—the railroad on Jefferson Avenue was constructed under several grants made by the Town-

ship and Village of Grosse Pointe, and the Village of Fairview, in the years 1891, 1893, and 1895, and further powers were conferred upon plaintiff in error, after its acquisition of these lines, by ordinance of the Village of Fairview passed May 16, 1905. These several village and township grants were for terms that have not yet expired, and contain provisions for five-cent fares within the territory covered by them.

The Jefferson Avenue lines are operated together as a single system in connection with lines leading from the city northwestwardly on Grand River Avenue to and beyond the city limits, constructed under rights derived by predecessors in title of plaintiff in error as follows:

By ordinance of May 1, 1868, the city granted to the incorporators of the Grand River Street Railway Company the right to construct lines on certain streets, including Grand River Avenue to its intersection with the Michigan Southern Railway at or near the then present city limits, with the right to build a second track within five years after the completion of the first. By § 8 this line was to be completed to a specified point contemporaneously with the paving of the street, and thence to the western city limits whenever public necessity, as determined by the common council, should require. By Acts of 1875 and 1885 the limits were extended from the railroad intersection to a point just beyond the Boulevard. By ordinance of August 3, 1888, there was granted the right to construct single tracks on Grand River Avenue from its then present terminus to the westerly city limits, and by ordinance of January 3, 1889, the city granted the right, among others, to construct a double track railway on Grand River Avenue from Woodward Avenue to the city limits, and under this authority tracks were built to the limits just beyond the Boulevard. The latter ordinance required the company to stipulate that it would sell tickets eight for twenty-five cents, good over the entire

route of the company, when offered during the morning and afternoon hours specified in the ordinance passed on the same date respecting the Detroit City lines and already referred to.

In 1897 the Township of Greenfield granted to the incorporators of the Grand River Electric Railway, (a different corporation from that last mentioned), a franchise for tracks along the Grand River Road from the westerly line of the township to the then present city limits of Detroit, with a right to charge not exceeding five cents as the fare for any distance in Greenfield, or six tickets for twenty-five cents, with school tickets at ten for thirty cents. Under this franchise a railroad was built along the Grand River Road from the then city limits near the Boulevard throughout the Township of Greenfield.

As already indicated, all of these lines of railway, with the appurtenant rights, privileges, and franchises, were acquired by plaintiff in error shortly after its incorporation, under the authority of § 15 of the Act of 1867.

Afterwards, by an act of the legislature approved October 24, 1907 (Mich. Laws, Ex. Sess. 1907, p. 55), a part of the former Village of Fairview, including Jefferson Avenue for a distance of about 12,500 feet northeastwardly from Hurlburt Avenue, was annexed to the City of Detroit. And by Acts of June 16, 1905, and June 19, 1907 (Mich. Local Acts 1905, p. 1144; Local Acts 1907, p. 940), the city limits were extended northwestwardly along Grand River Avenue for a distance of about one-half mile in territory previously part of Greenfield Township. Each of these acts provided that the annexed territory should be subject to all the laws of the State applicable to the city and to all the ordinances and regulations of the city, with exceptions not now material.

It is the contention of defendants in error that the provisions respecting fares in the two ordinances of January 3, 1889, assented to by the predecessors of plaintiff in error

in the ownership of the city lines on Jefferson and Grand River Avenues, were intended to be applicable throughout the city as it might from time to time be enlarged, and that plaintiff in error is bound by the limitations of those ordinances as to all its lines within the city, not only as its limits existed in 1889, but also including the territory annexed in 1905 and 1907.

In case No. 1, the Supreme Court of the State sustained the imposition of a fine for failure to accept workingmen's tickets, so called, within the hours prescribed by the ordinance of 1889 upon the Jefferson Avenue line within the territory formerly part of the Village of Fairview but annexed to the city by the Act of October 24, 1907. 162 Michigan, 460.

In No. 4, the court sustained a judgment awarding a mandamus requiring plaintiff in error to observe the provisions of the ordinances of 1889 upon the entire Jefferson Avenue—Grand River Avenue route, so far as included within the city limits as extended in 1907. 173 Michigan, 314.

In each case plaintiff in error seasonably and expressly insisted that the several township and village grants above referred to were subsisting and valid contracts when the legislature of Michigan passed the acts extending the city limits, and that those acts, if so construed or applied as to affect or modify the contracts, were in conflict with § 10 of Article I of the Constitution of the United States. And it is upon the overruling of these contentions that the cases are brought here, under § 237, Jud. Code.

Defendants in error challenge our jurisdiction, upon the ground that the judgments of the state court of last resort were based solely upon the meaning that it attributed to the ordinances of January 3, 1889, without reference to any subsequent legislation.

It is true, as this court has many times decided, that the "contract clause" of the Constitution is not addressed to

such impairment of contract obligations, if any, as may arise by mere judicial decisions in the state courts without action by the legislative authority of the State. *Cross Lake Shooting and Fishing Club v. Louisiana*, 224 U. S. 632, 639; *Frank v. Mangum*, 237 U. S. 309, 344.

But in this case there were state laws passed subsequent to the making of the alleged contracts in question, in the form of the legislation of 1905 and 1907 extending the corporate limits of the city. And it is not correct to say that the decisions of the state court turned upon the mere meaning of the contracts without reference to these subsequent laws. Assuming what in effect is conceded, that the village and township franchises constituted contracts within the protection of the Federal Constitution, the force of the decisions was to abrogate the rights acquired by plaintiff in error through its acquisition of the suburban lines, not merely because of the assent of the owners of the city lines to the ordinances of January 3, 1889, but because of the combined effect of those ordinances and the acts of the legislature of Michigan that thereafter extended the city limits. It is true that no question is or can be here made respecting the authority of the legislature to add new territory to the city; and it is likewise true that the annexation acts contain no reference to existing contracts, nor any specific mention of the subject-matter of street railway rights. But, in cases of this character, the jurisdiction of this court does not depend upon the form in which the legislative action is expressed, but rather upon its practical effect and operation as construed and applied by the state court of last resort, and this irrespective of the process of reasoning by which the decision is reached, or the precise extent to which reliance is placed upon the subsequent legislation. *McCullough v. Virginia*, 172 U. S. 102, 116, 117; *Houston & Texas Central R. R. Co. v. Texas*, 177 U. S. 66, 77; *Terre Haute &c. R. R. Co. v. Indiana*, 194 U. S. 579, 589; *Hubert v. New Orleans*, 215

U. S. 170, 175; *Fisher v. New Orleans*, 218 U. S. 438, 440; *Carondelet Canal Co. v. Louisiana*, 233 U. S. 362, 376; *Louisiana Ry. & Nav. Co. v. New Orleans*, 235 U. S. 164, 170. The necessary operation of the decisions under review is to give an effect to the annexation acts that substantially impairs the alleged contract rights of plaintiff in error as they theretofore stood; and it makes no difference that that result was reached in part by invoking the provisions of another agreement supposed to be binding upon plaintiff in error. Whether the agreement thus invoked, when properly construed, has the effect attributed to it, is a question that touches upon the merits, and not upon the jurisdiction of this court.

Coming, then, to the merits: Not only is it not disputed, but it is not open to serious dispute, that the original village and township grants were contractual in their nature. It appears that the recipients of those grants, like their successor, the plaintiff in error, became incorporated under the Street Railway Act of 1867, of which § 13 provides that consent for the construction and maintenance of a street railway is to be given by the corporate authorities in an ordinance to be enacted for the purpose, and under such rules, regulations, and conditions as may be prescribed by such ordinance, but that no such railway shall be constructed until the company shall have accepted in writing the terms and conditions upon which they are permitted to use the streets. By § 14, after any city, village, or township shall thus have consented to the construction and maintenance of street railways, or granted rights and privileges to the company, and such consent and grant shall have been accepted by the company, the consent shall not be revoked or the company deprived of the rights and privileges conferred. And by § 20 the rates of toll or fare to be charged by the company are to be established by agreement between it and the corporate authorities, and are not to be increased without consent of

242 U. S.

Opinion of the Court.

such authorities. It is plain, as was pointed out by this court in *Detroit v. Detroit Citizens St. Ry. Co.*, 184 U. S. 368, 385, that the legislature regarded the fixing of the rate of fare as a subject for agreement between the municipality and the company. And in these cases, as in that, the terms of the several ordinances are such as clearly to import a purpose to contract under the legislative authority thus conferred.

But it is insisted—and to this effect was the decision of the state court—that the terms of these contracts were in effect modified by the assent of the owners of the city lines on Jefferson and Grand River avenues to the ordinances of January 3, 1889, and the subsequent acquisition of these lines by plaintiff in error followed by its acquisition of the suburban lines. It is, indeed, argued that the construction placed by the state court upon the ordinances of 1889 as contracts is not subject to the review of this court, and a declaration to this effect is cited from *Henderson Bridge Co. v. Henderson City*, 141 U. S. 679, 689, quoted in a subsequent case of the same title in 173 U. S. 592, 602. But, notwithstanding what was there said, it is too well settled to be open to further debate, that where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? and (3) Has that obligation been impaired by subsequent legislation? *Houston & Texas Central R. R. Co. v. Texas*, 177 U. S. 66, 77; *St. Paul Gas Light Co. v. St. Paul*, 181 U. S. 142, 147; *Terre Haute &c. R. R. Co. v. Indiana*, 194 U. S. 579, 589.

But of course in the present cases the crucial question is, what were the obligations of the contracts as they stood at the time of the subsequent legislation? And therefore it becomes material to determine whether, by voluntary action of the parties between the making of the suburban

grants and the passage of the annexation acts, the obligations arising out of those grants had been modified. The state court deemed that the assent of the Detroit City Railway to that provision of the first-mentioned ordinance of January 3, 1889, which required it to carry passengers at reduced rates "over any of its lines in said city" applied to any and all lines it either then owned or might thereafter acquire, and comprehended all territory within the limits of the city, including any extension of the municipal boundaries or of the company's lines within those boundaries; and that by the acquisition of the lines of the Detroit City Railway plaintiff in error became bound by this agreement, and was obliged to observe it, even with respect to the lines that it afterwards acquired as assignee of the Grosse Pointe and Fairview franchises, so far as those lines were included in the extended city limits. It was said (162 Michigan, 462) that there were two methods of extending street railways, one by construction, the other by purchase under § 6448 (2 Comp. Laws 1897), being § 15 of the Act of 1867; that "the purchased railway becomes as much a part of the system as does the railroad as constructed;" and that the ordinance of 1889 was made in view of the power of the legislature to increase or diminish the territory within the city, and the real intent was to provide for single fares within the city limits as they should from time to time be fixed. In 173 Michigan, 314, similar reasoning was applied to the ordinance of 1889 respecting the Grand River Avenue line and the obligation imposed upon the owner of that line to apply the single fare and the reduced rates "over the entire route of said company." The court considered (173 Michigan, 325, 326) that certain of the language used in the original ordinance of 1862 to the Detroit City Railway and in that of 1868 to the Grand River Street Railway Company showed that the probable growth of the city and development of its public utilities were anticipated, and

indicated a purpose that the grants should apply as far as the city might be extended.

Notwithstanding our disposition to lean towards concurrence with the view of the state court of last resort in a matter of this nature, we are unable to accept its construction of the ordinances of 1889. In the first place, we are unable to view the original ordinances as intended to extend the rights of the respective grantees beyond the then existing city limits and as far as the limits should be extended in the future. Their language does not seem to us to admit of this interpretation, and the practical construction placed upon them by the parties was to the contrary. As the city limits on Jefferson Avenue and on Grand River Avenue were extended, the respective companies obtained, and presumably were required to obtain, new grants authorizing an extension of the railways from their then present *termini* to the new city limits. Both of the ordinances of 1889 contained express grants to this effect with respect to Jefferson Avenue and Grand River Avenue respectively. Each of the original city grants, and each of the ordinances of 1889, contained particular and comparatively brief limitations of time within which the authorized lines of railway were to be constructed and placed in operation. For these reasons, and because in other respects the grants are quite specific in their terms, and because the city at that time had no authority to extend its corporate limits nor to make a grant of street railway rights beyond them, we are compelled to conclude that the ordinances of 1889 had no such extensive meaning as that attributed to them by the state court.

Defendants in error invoke the established rule that the terms of a municipal grant or franchise should be construed strictly as against the grantee, and as favorably to the grantor as its terms permit. The state court deemed the rule to be applicable. 162 Michigan, 465; 173 Michigan, 323. It is at least doubtful, however, whether the

rule, properly applied to the facts of these cases, does not bear altogether in favor of plaintiff in error. For of course it is not possible to adopt an extensive construction of the obligations imposed upon the city companies by the ordinances without adopting a like construction as to the extent of the franchises thereby conferred upon the companies. And can it be supposed that, if either of these companies had claimed the right to lay down tracks and operate railways in the annexed territory by virtue of the ordinances of 1889, they would not have been met with the rule that municipal grants are to be construed strictly against the grantee, and cannot be extended beyond their express terms? In any view, the ordinances, just because they were intended to be contracts, and not merely legislative enactments, ought to be regarded as having reference to a specific subject-matter.

But were we in error about the construction of these ordinances, we still think that the acquisition of the city lines by plaintiff in error, and its subsequent acquisition of the suburban lines, did not bind it to put the reduced fare provisions in effect upon the suburban lines if and when the city limits should thereafter be extended to include any parts of the latter. If the city lines had been extended into the annexed territory by either of the city railway companies under any authority conferred by or assumed under the ordinances of 1889, a very different question would be presented. But such is not the case. And although we may follow the state court to the extent of considering the acquisition of the suburban lines under § 6448, Comp. Laws, as being in effect an extension of the city railways, we cannot, without doing violence to the provisions of that section, regard such acquisition as abrogating any part of the franchise rights that pertained to the suburban lines; for the section itself declares that upon such purchase being made, the purchasing company "may use and enjoy the rights, privileges and franchises

of such company, the same, and upon the same terms as the company whose road and franchises were so acquired might have done." The rate of fare being among the most material and important of the terms and conditions referred to (*Detroit v. Detroit Citizens St. Ry. Co.*, 184 U. S. 368, 384; *Minneapolis v. Minneapolis Street Railway Co.*, 215 U. S. 417, 434), we find it impossible to regard the purchase of the suburban lines, with their rights, privileges, and franchises, as being in effect an extension of the city lines, but at the same time an abrogation of an essential part of the rights and privileges appurtenant to the acquired lines.

The state court cited and relied upon *Indiana Ry. Co. v. Hoffman*, 161 Indiana, 593, and *Peterson v. Tacoma Ry. & Power Co.*, 60 Washington, 406. In their particular facts and circumstances those cases differ somewhat from the cases now before us; and, without stopping here to analyze them, we deem it sufficient to say that we are unable to accept their reasoning so far as it is inconsistent with the views we have expressed.

It results that the provisions of the township and village ordinances respecting the rates of fare remained in full force and effect after the acquisition of the suburban lines by plaintiff in error, notwithstanding its previous acquisition of the city lines or the previous assent of the city railway companies to the ordinances of 1889. Because of the provision of § 10 of Article I of the Constitution of the United States, it was not within the power of the State of Michigan by any subsequent legislation to impair the obligations of those contracts, and since the judgments of the Supreme Court of that State gave such an effect to the annexation Acts of 1905 and 1907, in conjunction with the ordinances of 1889, as to impair those obligations, the judgments must be reversed.

We have made no particular mention of an agreement entered into between the city and plaintiff in error in the

year 1909, because we agree with the state court (173 Michigan, 321) that it was no more than a temporary provision for a *modus operandi*, and had not the effect of waiving any of the rights of either party.

Judgments reversed, and the causes remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE CLARKE, dissenting:

I greatly regret that I cannot concur in the decision just announced. The opinion of the majority of the court plainly regards the act of the legislature of the State of Michigan, extending the corporate limits of the City of Detroit, as a valid law, passed in the exercise of an undoubted power in the legislature to deal as it does with the municipal corporations of that State, and its validity for the purposes for which it was intended is not questioned. It will remain a valid law after this decision as it was before. In substance the decision of this court is that the Supreme Court of Michigan, in deciding that there is an implied condition in the contract between the City of Detroit and the railway company that the rates of fare therein provided for shall apply within the city limits when extended, and in requiring the railway company to accept the same fares throughout the new city limits as were accepted throughout the former limits, gives an effect to the extension act which impairs the railway company's contract with the city. I am of the opinion that for the state Supreme Court thus to interpret the terms of the contract of the railway company with the city is not to give an effect to the valid extension act of the legislature which violates the provision of the Constitution prohibiting a State from passing any "law impairing the obligation of contracts." The passing of the valid extension act merely created a situation under which the implied condition, *existing in the fare contract from its*

242 U. S.

Syllabus.

beginning, finds an application to the new territory. This is giving effect not to the terms of the act of the legislature but to the terms of the contract with the city, and the most that can be said against the decision of the Supreme Court of Michigan is that it gives an erroneous construction to the contract. But since it is settled by many decisions of this court that the contract clause of the Federal Constitution does not protect contracts against impairment by the decisions of courts except where such decisions give effect to constitutions adopted or laws passed subsequent to the date of such contracts (*Cross Lake Shooting and Fishing Club v. Louisiana*, 224 U. S. 632), I am of opinion that there is no federal question before this court in this case and that the writ of error should be dismissed. This is a high and delicate power which the court is exercising in this case and it should be resorted to only in cases which are clear, and, for the reasons thus briefly stated, I am convinced that this is not such a case.

I am authorized to state that MR. JUSTICE BRANDEIS concurs in this dissent.